THE WHITE HOUSE

WASHINGTON

May 1, 1984

MEMORANDUM FOR GREGORY JONES
LEGISLATIVE ATTORNEY
OFFICE OF MANAGEMENT AND BUDGET

FROM: H. LAWRENCE GARRETT, III

SUBJECT: Statement of Norman A. Carlson
Concerning H.R. 5477

The Counsel to the President requested that I review the attached proposed testimony and reply directly to you.

I have reviewed the testimony and, as we discussed, with but one exception, have no legal objection to it.

In the fourth paragraph it is recommended that "the categories set forth in H.R. 5477 require an additional category (f), 'any other object'." The recommendation is followed by an explanation that "[t]his would include any items which are not specifically approved by the regulations of the institution and the Bureau."

I submit that the phrase "any other object" is overly broad and would be subject to attack on the grounds of vagueness. If the recommended language provided for: "any other object not specifically approved by the regulations of the institution and the Bureau," such a provision would be less susceptable to attack.

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Subject: Statement of Norman A. Carlson concerning H.R. 5477 which provides sanctions for "providing or possessing contraband in a prison"

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U.S. Department of Justice
Office of Legislative and
Intergovernmental Affairs

Office of the Director
Intergovernmental Affairs

Washington, D.C. 20530

APRIL 26, 1984

224140 ca

TO: FRED FIELDING
COUNSEL TO THE PRESENT

FM: MARIA/WALICKI/633-3917

GREG JONES AT OMB IS HANDLING THE ATTACHED TESTIMONY. HE IS ON 395-7220.

395-3856

DRAFT

STATEMENT

OF

NORMAN A. CARLSON
DIRECTOR
BUREAU OF PRISONS

BEFORE

THE

COMMITTEE ON THE JUDICIARY
SUBCOMMITTEE ON CRIMINAL JUSTICE
HOUSE OF REPRESENTATIVES

CONCERNING

H.R. 5477

ON

MAY 2, 1984

Mr. Chairman,

I welcome the opportunity to appear before your committee and discuss the provisions of H.R. 5477. This bill provides sanctions for "providing or possessing contraband in a prison".

As you know, the introduction and possession of contraband into prisons are pervasive problems in corrections of the most serious nature. Weapons, narcotics, escape devices and other contraband items pose grave risks to the safety of both inmates and staff.

The present law, which is codified in 18 USC 1791, provides up to 10 years imprisonment as punishment for the introduction or conveyance of contraband in a Federal penal or correctional facility, or for such an attempt. However, the law is defective in that mere possession of the contraband object does not constitute an offense. Also, there is presently no authority for the Bureau of Prisons to forfeit the contraband. This proposed legislation addresses the first problem, but does not address the second.

The Bureau of Prisons endorses the approach taken to the problem of contraband in prison incorporated in the Comprehensive Crime Control Act of 1983 (S.1762). H.R. 5477 is similar to S.1762 in a number of ways, but differs, first, in its definition of contraband. We believe the categories set forth in H.R. 5477 require an additional category (F), "any other object". This would include any items which are not specifically approved by the regulations of the institution and the Bureau. Examples include valuable items which could be used for gambling or could otherwise threaten the security and order of an institution. H.R. 5477 includes such a comprehensive provision in

the section on possession by inmates (Section (a)(2)), but not in the section on introduction of contraband into an institution by outsiders (Section (a)(1)).

Second, as indicated above, this bill fails to provide for the forfeiture of contraband items. We believe it is important to have the authority to seize such property and dispose of it properly. Such authority is provided for in S.1762.

Third, we note H.R. 5477 sets forth a grading of the offenses according to the severity and dangerousness of the object involved. We agree with the concept of grading the punishment and with the maximum terms of imprisonment provided. However, the fine structure in this bill is considerably higher than that in the Crime Control Act, where the maximum fine is $25,000.

Finally, we agree with the section on mutiny and riot, which we note is virtually identical to the Crime Control Act, except that the maximum fine is increased from $25,000 to $250,000.

We appreciate the interest you have shown in one of the Bureau of Prisons' most difficult problems by introducing this legislation, and I will be glad to answer any questions you may have.

THE WHITE HOUSE

WASHINGTON

May 1, 1984

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS JGR

SUBJECT: Draft Testimony for Lowell Jensen Concerning Criminal Law, Bill S. 804

OMB has asked for our views on testimony Lowell Jensen proposes to deliver before the Senate Subcommittee on Criminal Law on May 2 concerning S. 804. That bill, developed partly in response to Abscam, would limit Federal undercover operations and greatly expand the entrapment defense. Jensen's proposed testimony acquiesces in the first part of the bill, which specifically authorizes undercover operations subject to Attorney General guidelines. As Jensen points out, this provision is unnecessary, but since it simply reflects existing practice he does not object. Jensen also supports the second part of the bill, clarifying the authority of undercover operations to enter contracts, maintain bank accounts, etc.

Jensen strongly opposes the remainder of the bill, which would limit the circumstances under which an undercover investigation could be initiated, make the United States strictly liable for the torts of those participating in an undercover operation (even if the tortfeasor violated the instructions of his "employer," the Government), and require the filing of reports with Congress on undercover operations, including some that are still ongoing. Finally, the testimony notes the Administration's firm opposition to the provisions in the bill that would substitute an "objective" entrapment defense for the current, court-developed "subjective" defense. Current entrapment law is based on an assessment of whether the particular defendant was predisposed to commit the crime when provided the opportunity to do so by government undercover agents. S. 804 would have the defense turn on whether the government's methods "more likely than not would cause a normally law-abiding citizen to commit a similar offense." This "objective test" has been consistently rejected by the courts. The objective test would hobble large-scale drug investigations, where the typical, astronomical amounts of cash involved would cause many jurors to conclude that the objective test was satisfied.

I have no objections to the thoughtful testimony.

THE WHITE HOUSE

WASHINGTON

May 1, 1984

MEMORANDUM FOR GREGORY JONES
LEGISLATIVE ATTORNEY
OFFICE OF MANAGEMENT AND BUDGET

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Draft Testimony for Lowell Jensen
Concerning Criminal Law, Bill S. 804

Counsel's Office has reviewed the above-referenced testimony, and finds no objection to it from a legal perspective.

FFF:JGR:aea 5/1/84
cc: FFFielding/JGRoberts/Subj/Chron

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investigation could, in certain cases, represent an improper interference with the responsibility of the Executive Branch to enforce criminal laws.

The Department of Justice generally supports the provisions of proposed section 3802 with certain technical amendments. This section would overcome limitations and ambiguities concerning the authority of our investigative agencies to enter into contracts and leases, establish proprietaries, use the proceeds generated by proprietaries, and enter into agreements with cooperating individuals in connection with undercover operations. First, we would recommend that proposed section 3802(c) be amended to allow the use of proceeds not only of proprietaries, but of any undercover operation, to offset necessary and reasonable expenses of the operation. Second, subsection 3802(d) which would allow the deposit of appropriated funds in banks and other private financial institutions should be expanded to allow the deposit of the proceeds of an undercover operation. Authority of the FBI to deposit appropriated funds and the proceeds of an undercover operation in financial institutions is currently contained in subsection 205(b)(1)(C) of P.L. 98-166, the Department's appropriations act for fiscal year 1984. This provision will be of no effect after September 30th, however, and its enactment as permanent law in title 18 would ensure the FBI and our other investigative agencies are able to continue this practice after that date.

We are strongly opposed to section 3803. This section would impose specific statutory limitations on the initiation of undercover operations and the offering of an inducement or opportunity to commit a crime. Basically, our objection to this part of the bill is that it imposes specific, inflexible standards on our investigative agencies that do not take into account the variety of situations arising in actual investigations. Nor can statutory standards be readily adjusted to conform to our evolving experiences with undercover operations. As the Subcommittee knows, we face today a more sophisticated and dangerous breed of criminal than ever before and investigative techniques, including undercover operations, must constantly be refined and adjusted to counteract this threat.

In our view, the proper and most practical method for establishing investigative thresholds is through Attorney General guidelines, which set forth investigative procedures within the larger confines of the law. The advantages of guidelines are that they can be general enough to apply to varied fact situations and flexible enough to permit appropriate responses to specific cases. This allows for the exercise of judgment on the part of our most experienced investigators and prosecutors and consideration of the exigencies of each particular investigation. Likewise, guidelines are subject to constant revision and improvement not possible with a statutory scheme.

Moreover, an examination of the standards set out in proposed section 3803 shows that several of them are overly restrictive. For example, section 3803(a)(1) requires a reasonable suspicion that an individual has engaged, is engaging, or is likely to engage in criminal activity before an undercover operation may be used to obtain information about him. Undercover operations, like all investigations, may involve gathering information about witnesses, victims, and others not engaged in criminal activity. The names, addresses, and other data about such persons are often essential to the investigative process. This part of the bill would preclude the use of undercover techniques to obtain this vital investigative information.

Proposed subsections 3803(a)(3) and (4) severely limit the use of undercover operations in situations where an undercover operative "will infiltrate any political, governmental, religious, or news media organization or entity," or where a person acting in an undercover capacity will enter into a confidential professional relationship such as by posing as a clergyman or physician. The potentially sensitive nature of such operations does require particular care in determining whether the use of an undercover technique is appropriate, but the bill would require a finding of "probable cause" to believe that the operation is necessary to detect or prevent specific criminal acts. This is too high a threshold for the use of an investigative technique and, indeed, in many cases would define those

situations in which an undercover operation would be unnecessary because probable cause already exists to arrest the subjects or to conduct a search. Rather than imposing a "probable cause" standard for using an undercover technique in these sensitive areas, a better approach would be to require a high-level decision with respect to such an undercover investigation. This is presently the case under the Department's FBI undercover operations directed at offenses conducted by groups claiming to be religious or political organizations. These problems are further complicated by the fact that the bill contains no definitions for the terms "religious" and "political" organization or for what is meant by the term "to infiltrate" such an organization.

The Department of Justice is also strongly opposed to section 3804 which would vastly expand the civil liability of the United States for tortious conduct with some nexus to an undercover operation. In effect, this section would make the United States strictly liable for wrongful acts bearing even the most tenuous connection to an undercover operation. What is particularly disturbing about this provision is that it would abandon the most basic principles of tort liability and impose liability on the United States irrespective of whether there was any showing that the proximate cause of the injury was a wrongful or negligent act on the part of the government or its employees. For example, the United States would be liable for damages caused by a private individual cooperating in an

undercover operation even if he were acting in violation of specific instructions and concealed his conduct from supervising agents.

To the extent that injury to a private person is caused by the government's wrongful or negligent supervision of an undercover operation, a remedy is available under the present provisions of the Tort Claims Act (28 U.S.C. §2671 et seq.). Moreover, the concept of negligence is a flexible one under which the standard of care imposed on the government increases where a foreseeable risk of injury to the nature of a particular operation. There is no justification for making the United States civilly liable for an individual's tortious conduct for which the government bears no responsibility, whether in the context of undercover operations or other government activity.

Proposed section 3805 would require the Attorney General to file an annual report with the Congress concerning all terminated undercover operations and all operations approved more than two years prior to the report date irrespective of whether they have been ended. In principle, the Department has no objection to providing Congress with information on our undercover operations but we are concerned about the scope of the reporting requirements imposed by this section. First, the extent of the information required would impose a tremendous administrative burden with little, if any, resultant gain to the legislative process. For example, there are normally hundreds of arrests and

indictments annually resulting from undercover operations. Subsections 3805(b)(9) and (10) would require separate entries for each one.

Second, this section would require information on terminated operations that had not yet resulted in arrest, indictment, or trial, and also information on any ongoing operation if it had been approved more than two years earlier. The Department of Justice is strongly opposed to requirements that we disclose in a public document information about an undercover operation prior to the conclusion of trial or termination of covert activity for the obvious reason that such disclosure would jeopardize investigations and prosecutions as well as the safety of government agents, informants, and cooperating witnesses and victims.

Finally, and perhaps most importantly, section 3805 would require the Attorney General to report on "all undercover operations." From the context, we assume that only Department of Justice operations are meant to fall within this requirement, and not those of other departments and agencies. If so, this limitation should be clarified. Even as so understood, however, It would appear that the FBI's counterintelligence undercover operations would be encompassed by this requirement. Clearly, national security matters should be excluded form any public report. Thus, we strongly urge that, if the Subcommittee decides to process legislation in this area, the term "undercover operation" as used throughout the bill be defined to exclude foreign counterintelligence operations of the FBI.

PART II. ENTRAPMENT

Section three of the bill would for the first time establish a statutory entrapment defense as a new section 16 in title 18. Although Congress undoubtedly possesses the power to define the entrapment defense,[3] the fact that it has heretofore declined to do so reflects, in our view, a wise decision that the law in this area as developed by the federal courts in hundreds of cases over many years properly balances the interests of law enforcement and privacy. Indeed, this was the judgment of the Senate Judiciary Committee, only a little more than two years ago, when it determined to retain the prevailing court-developed entrapment defense in the context of approving the Criminal Code Reform Act (S. 1630).[4]

By contrast, the defense to be placed in the statute books by S. 804 would abandon the current law of entrapment and would substitute a version of the defense that the Supreme Court has repeatedly repudiated on the ground that it would benefit professional, hard core criminals while providing no greater protection to the average law-abiding citizen. The Supreme Court's decisions rejecting the type of formulation of entrapment proposed in S. 804 involve several cases spanning nearly fifty years and do not reflect the thinking of only a particular group of justices.[5]

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[3] See United States v. Russell, 411 U.S. 423 (1973).

[4] See S. Rep. No. 97-307, 97th Cong., 1st Sess., pp. 118-130.

[5] See Sorrells v. United States, 287 U.S. 435 (1932); Sherman v. United States, 356 U.S. 369 (1958); Lopez v. United

Since we have concluded that the interests of law enforcement would be gravely damaged by enactment of the conflicting version of the defense proposed in S. 804, the Department of Justice strenuously opposes this aspect of the bill.

Under current case law, it is recognized that merely affording a person an opportunity or the means to commit a crime does not constitute entrapment, and the courts have further upheld and noted the necessity of using undercover techniques such as infiltration of organized groups and general "artifice and strategem" to catch those engaged in criminal enterprises.[6] The key element of the existing entrapment defense surrounds the issue of inducement. The defense of entrapment is met if the facts show that the defendant was an otherwise innocent person who the government, through the creative activity of its officials, caused to commit the crime. Thus, when the government provides some inducement to an individual to commit an offense, as it frequently must in the course of underover operations, the government must establish that the individual was "predisposed" towards the criminal activity. This in turn involves a subjective inquiry into the defendant's inclination to commit the

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States, 373 U.S. 427 (1963); Osborn v. United States, 385 U.S. 323 (1966); United States v. Russell, 411 U.S. 423 (1973); Hampton v. United States, 425 U.S. 484 (1976).

6 United States v. Russell, supra; Sorrells v. United States supra.

crime, and permits evidence to be introduced, e. g., demonstrating that the defendant was not an ordinary law-abiding citizen suddenly confronted by overwhelming temptations offered by law enforcement officials to commit an offense, but instead was seeking to engage in criminal activities, for which the government agents merely provided the means or opportunity. In other words, the present formulation of the entrapment defense focuses, appropriately, on the guilt or innocence of the defendant and seeks to determine his or her state of mind ("predisposition") at the time the challenged inducements were made.

S. 804 would substitute for this long-standing "subjective" test an "objective" test. Under the bill's proposed defense, the standard for entrapment would be whether the defendant's actions were induced by the government's use of "methods that more likely than not would have caused a normally law-abiding citizen to commit a similar offense." In applying this test, the predisposition of the defendant to commit the crime would be irrelevant.

Such a recasting of the entrapment defense would mean, for example, that an established narcotics dealer with several prior convictions could not be convicted of drug smuggling if he convinced a jury that the purchase price offered by an undercover agent would have been sufficient to cause a "normally law-abiding citizen" to commit such an act. But in order to accomplish an undercover drug buy, agents must offer the going price, which may represent a huge profit to the defendant. The fact that a jury

of normally law-abiding citizens might find the routine profit on a large scale drug deal so shockingly high as to perhaps have tempted them to commit the crime should not allow the acquittal of an experienced trafficker. Yet the "objective" test in S. 804 opens the door to this unjust result. As the Supreme Court observed, in rejecting the invitation to adopt an "objective" entrapment test, it does not "seem particularly desirable for the law to grant complete immunity from prosecution to one who himself planned to commit a crime, and then committed it, simply because governmental undercover agents subjected him to inducements which might have seduced a hypothetical individual who was not so predisposed."[7]

In sum, to legislatively establish the objective test for entrapment would serve no purpose other than to provide a windfall to wrong-doers who would be currently foreclosed from successfully asserting an entrapment defense because of their predisposition to commit the offense. If a "normally law-abiding citizen" is induced by the government to commit an offense, he can now defend the charges by showing lack of predisposition. Adoption of the objective test would benefit experienced criminals and provide no additional protection to the law-abiding citizen.

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[7] United States v. Russell, supra, 411 U.S., at 434.

As if this were not enough, this section of the bill in addition to adopting the "objective" test, would create three highly objectionable irrebuttable presumptions which the defendant could use to establish a per se entrapment defense.

The first of these presumptions would be triggered if the defendant commits the crime because the government threatens harm to the person or property of any individual. We agree that in such a case conviction generally should be barred. But the provision is extremely broad and could have unforeseen effects. For instance, in the midst of negotiations over a major narcotics sale, an undercover agent may have to "talk tough" or "threaten" an experienced street-wise seller who was attempting to renege on the deal or change its terms, in order for the agent to complete the transaction, maintain his credibility, or protect himself or others from harm. In the world of narcotics trade, such conduct in neither unreasonable nor unusual.

Also, the presumption contains no requirement that the defendant even be aware of the threatened "harm" to another individual. Thus, the presumption could apply where agents threatened prosecution of a low level participant in a drug ring when he attempted to back out on an agreement to proceed with a purchase from the defendant. With the defendant not even aware of, much less influenced by, the pressure applied to the intermediary, there is no reason for him to be able to assert entrapment as a matter of law for a crime in which he willingly

participated. Again, current law is adequate to protect innocent persons. Courts can consider duress as a defense, and can weigh government conduct against predisposition.

The second presumption would establish entrapment as a matter of law if the government "manipulated the personal economic, or vocational situation of the defendant...." This provision is extremely vague and would provide no useful guidance to government agents. For example, every undercover operation involving the offering of a bribe, a fencing operation, or a narcotics purchase represents some manipulation of the "economic situation" of those who participate, no matter how willingly. This presumption offers numerous loopholes to be exploited by defendants, and the government would be powerless to rebut the presumption regardless of the defendant's criminal record or predisposition to commit the offense, or the reasonableness of the inducement in a particular case.

The third presumption would apply if the government provided goods or services necessary to the commission of the crime that the defendant "could not have obtained" without the government's help. This provision would overturn Supreme Court cases holding that the supplying of contraband or hard to obtain services to predisposed drug trafficking does not constitute entrapment.[8] Thus, this provision would cast doubt on the accepted and reasonable practice of a government agent's supplying limited

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[8] See United States v. Russell, supra; Hampton v. United States

amounts of contraband to show good faith or establish credibility with targets of an investigation. Moreover, it would seem to preclude a sale by an undercover agent of classified defense information or controlled high technology to a person who had amply demonstrated his desire to make such a purchase. This provision, like the other two presumptions, could bar the use of reasonable undercover techniques and allow acquittal of experienced, predisposed criminals without providing any additional protection to innocent citizens.

In short, Mr. Chairman, I urge the Subcommittee not to alter the entrapment defense as it has been developed by the courts. The proposed change would cause much harm to legitimate and necessary law enforcement operations and would wrongly shift the focus of the trial from an inquiry into the facts of the crime -- that is, was the particular defendant predisposed to commit the offense or did the police implant in his mind the idea of committing it -- to a general inquiry into police investigative techniques and how they might affect a hypothetical citizen.

In conclusion, the Department of Justice is opposed to any change in the law of entrapment for the reasons I have just outlined. We are also opposed to section 3803, which would regulate by statute the initiation of undercover operations and the offering of an inducement to commit a crime, and to section 3804 which would create a new tort liability of the United States for conduct connected with an undercover operation. We support the provisions of section 3802 dealing with certain fiscal

aspects of undercover operations provided the suggested minor changes mentioned in my statement and in our earlier report on the bill are made. We do not object to many of the provisions of sections 3801 and 3805 requiring, respectively, Justice Department guidelines for the conduct of undercover operations and reports to the Congress. However, several of the provisions in these sections should also be modified or deleted.

Mr. Chairman, that concludes my prepared statement and I would be happy to try to answer any questions the Members of the Subcommittee may have.

THE WHITE HOUSE

WASHINGTON

May 8, 1984

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS

SUBJECT: Statement of Stanley Marcus
Regarding Narcotics Trafficking

We have been provided with a copy of testimony U.S. Attorney Stanley Marcus (S.D. Fla.) proposes to deliver on May 10 before the Senate Subcommittee on Alcoholism and Drug Abuse. The testimony outlines the demonstrated link between crime and drug trafficking in South Florida, and the inevitable temptation for institutional corruption accompanying such trafficking. Marcus rejects the argument that life in South Florida has been improved by the vast quantities of drug money flowing into the region, and also rejects the argument that society would be better off if currently proscribed substances were decriminalized. (The latter argument is advanced most insistently by Alan Dershowitz, who contends that the Reagan Administration has increased crime by effectively fighting drug trafficking, since the reduced supply and concomitant increase in drug cost caused by effective enforcement has compelled users to resort to more crimes to gain the funds they need.) The testimony concludes by outlining the multi-faceted law enforcement response to the drug trafficking challenge. I have no objections.

Attachment

THE WHITE HOUSE

WASHINGTON

May 8, 1984

MEMORANDUM FOR BRANDEN BLUM
LEGISLATIVE ATTORNEY
OFFICE OF MANAGEMENT AND BUDGET

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Statement of Stanley Marcus
Regarding Narcotics Trafficking

Counsel's Office has reviewed the above-referenced testimony, and finds no objection to it from a legal perspective.

FFF:JGR:aea 5/8/84
cc: FFFielding/JGRoberts/Subj/Chron

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DRAFT

STATEMENT

OF

STANLEY MARCUS
UNITED STATES ATTORNEY
SOUTHERN DISTRICT OF FLORIDA

BEFORE

THE

SENATE SUBCOMMITTEE
ON ALCOHOLISM AND DRUG ABUSE

ON

MAY 10, 1984

Madam Chairperson and members of the Senate Subcommittee on Alcoholism and Drug Abuse:

I want to thank you for inviting me to testify at this hearing regarding the critical link between narcotics trafficking and crime in South Florida and some of the federal law enforcement efforts which have been undertaken in the last two years to address this extraordinarily serious problem.

South Florida is faced with a crime problem that is, I believe, truly unique. There are elements of the problem which can be found in the crime profile of other large metropolitan areas inside and outside the United States, but collectively the elements in South Florida add up to a crime problem perhaps unique in all the world.

Upon becoming United States Attorney for the Southern District of Florida more than two years ago, I expressed my view that far and away, the most serious federal crime problem in this district was the drug problem. Over the last ten years or so Miami had become the point of entry for perhaps 75 percent of all the cocaine and marijuana and methaqualone smuggled into the United States. It was in South Florida that the criminal wholesale transactions of much of the American drug trade were taking place.

The nature of the problem is staggering. More than 12,000

metric tons of marijuana enter the United States annually. Between 40 and 48 metric tons of cocaine enter the United States annually. About four metric tons of heroin enter the United States annually. Colombia continues to be our largest foreign supplier of marijuana. Indeed, according to intelligence reports Colombia has been the source of supply for approximately 75 percent of all cocaine, 50 percent of all marijuana and 50 percent of all methaqualone consumed in the United States.

Moreover, we have estimated that there may be as many as 25 million regular users of marijuana in the United States and more than four million regular users of cocaine in the United States. We have estimated that between 13 and 16 million Americans have used cocaine at least once, and that there are almost one-half million heroin addicts in this country.

The brutally serious nature of the drug problem in this country is evidenced by these crime statistics: it is estimated that one half of all jail and prison inmates regularly used drugs before committing their offenses. Some statistics indicate that 50 to 60 percent of all property crimes are drug related. Indeed, it has been estimated that one in four homicides in Miami is drug related.

It is, in short, perfectly clear that the real cost of drug smuggling and addiction in this country is staggering in human life and human suffering. It is equally clear that South Florida

has been and continues to be a main arena in the battle against drugs.

The estimated cash exchange generated last year by illicit wholesale drug transactions runs into billions of dollars; billions that must be laundered through various institutions or converted into non-cash assets. In either case, some businesses are drawn into collaboration with or outright domination by the drug moguls. It is perfectly clear that some of Southern Florida's institutions have consciously aided and abetted drug traffickers in their efforts to launder and export huge amounts of cash. In so doing, these institutions were not only violating the civic duties of responsible corporate citizenship, they may also have violated the tax laws and the currency laws of the United States.

Those who accept large amounts of cash -- raw currency -- in payment for valuable assets are also helping to make this region -- or any region of this country -- safe for the international drug trade. When one accepts an inflated price for his property on the stipulation that the buyer can pay cash, the overwhelming likelihood is that one is accepting a price premium constituted entirely of drug money. The power of drug dollars to corrupt the civic integrity, indeed the very soul of a community's commercial life, cannot be overestimated.

And we should be perfectly clear about what kind of people are behind these drug dollars. They are vicious, even by the standards of rank criminals. The international drug trade which has made South Florida its capital is not a single established cartel. It does not respect minimal standards of conduct -- rules of the game established over long years of operation in the community's shadows.

Rather, we are dealing with a collection of warring factions, an underworld that is wholly Balkanized. Within each of these cartels there is often a high degree of structure, but among them there is often anarchy. Even the crudest limits of decency are unknown to them. We are dealing with multiple, large scale criminal organizations who will open fire on a rival faction in a crowded mall, with utter indifference to the lives of the men, women and children who may be caught in the cross fire. A recent Federal prosecution in Miami involved the attempted murders of two DEA agents in Colombia by drug traffickers. In little more than a year, two ATF agents have been killed and one critically wounded in Miami in undercover operations involving drugs and firearms.

There are those who may wonder whether this criminal import industry is not a sort of devil's blessing to Southern Florida's economy, whether the billions in illicit proceeds which it generates each year does more good than harm to the quality of life here. The truth is that the potential cost of the drug trade to Southern Florida's quality of life is staggering. Not

only does it place our families in a milieu of constantly escalating violence, but it threatens fundamental corruption of our social infrastructure.

How long can a society's basic institutions maintain their integrity in the face of millions of drug dollars ready to be spent for the sole purpose of corrupting those institutions? Indeed, it is the universal modus operandi of the drug traffickers to attempt to corrupt public officials, and it is their genuine expectation that corruption will be accomplished. So strong is their perception of the corruptibility of officialdom that they are forever testing the system, waiting for it to yield. If it is the hardest of facts of life that narcotics traffic spawns a pervasive pattern of violent criminal conduct, so too it is true that corruption of our public institutions necessarily follows in its wake. We have found in this district in the past two years evidence of corruption at all levels of government, both domestic and foreign.

But the multibillion dollar drug trade threatens not only the corruption of our institutions. Continual exposure to criminal prosperity is corrosive to the soul. Our children see that there are people, many people, who apparently are living above the law and are thriving on their criminality. The message is: take, steal with both hands and forget about honest work. Ordinary class tensions are exacerbated as have-nots contemplate the lot of those who have plenty because they make their own

rules. The promise of sharing in the bounty tempts all of us to wink, just a little, at the blood stains on a nice piece of cash, until we are winking with both eyes and finally close our eyes altogether to base criminality. In the end we simply assimilate the morality of the gutter into our mainstream of life. This is what can happen if we learn to tolerate this massive criminal enterprise.

There are those who, while willing to concede that the narcotics business and the illicit struggle for profits necessarily generates violent crime, corruption and massive violations of our currency and tax laws, suggest that the war against drugs is wholly futile, if not counterproductive. Indeed, they make the case that the extreme profitability of drug dealing is supported, if not created by our laws proscribing narcotics and controlled substances, and that it is this profitability -- therefore this illegality -- which is the source of the violence and corruption associated with drugs. The solution which some advocate simply is to decriminalize all phases of narcotics transactions and accept the social costs of greatly enhanced access to these drugs.

The consensus, however, in our nation has been that the social costs associated with legalization far outweigh those that we now bear. Indeed, any law enforcement official has seen with his own eyes the devastating impact on the individual lives, often very young lives, of those who fall in the path of narcotics addiction. As long as our best thinking on this subject

brings us to the conclusion that decriminalization would be socially reckless, we are necessarily confronted with the immense law enforcement task which arises from the tremendous profits generated by the narcotics business. At the heart of the issue is the fundamental challenge of depriving the drug trade of its profitability without going to the extreme of decriminalizing it. And it is to this end that law enforcement is directed.

The profitability of any industry -- even this insidious one -- is a function of its revenues one the one hand and its costs on the other. Our law enforcement efforts in South Florida have been designed to increase those costs at every key point of vulnerability with the purpose of having those costs rise so high that they overwhelm even the immense revenues generated by this criminal industry.

The massive and intensified federal law enforcement response to this staggering, multi-faceted problem here and elsewhere has involved at least these interlocking parts: (a) a new and expanded interdiction effort; (b) increased efforts to identify, penetrate and prosecute major international and domestic narcotics organizations; (c) an increased and unparalleled effort to target, penetrate and prosecute the major money laundering enterprises which enable foreign narcotics cartels to launder and remove billions of dollars from this country; (d) increased investigation and prosecution of foreign officials from source countries involved in the international chain of drug smuggling;

(e) intensified prosecutive effort in the area of violent crime inextricably tied to narcotics; (f) increased investigation and prosecution of official and political corruption, especially where tied to narcotics traffic; (g) a quantum increase in forfeiture of narcotics dealers' assets, including cars, planes, boats, real property and cash proceeds. We have opted for this comprehensive approach because no single strategy will work.

It may seem at times that the resources of this criminal import industry are limitless; they are not. There are only so many people willing to go to jail for the industry and one would expect that this number would sharply decline with a significant increase in the certainty and severity of punishment. Moreover there are only a fixed number of ships and planes -- only a fixed amount of cash and property -- that this industry can afford to lose before it will run in the red. In Florida we have begun a massive effort to press this criminal enterprise to the limits of its solvency. While we haven't reached those limits yet, we continue to intensify our efforts on the firm conviction that those limits are not ultimately beyond our reach.

As arduous and expensive as this effort is, it is difficult to imagine how our responsibility to our nation's health, welfare and sanity could possibly contemplate anything less. A society willing to stand by passively while its children are progressively debilitated by these "recreational" poisons is a society that has virtually written off its children, its very future. A

society that says it has waged an excruciatingly difficult battle and that it has paid an enormous price, and therefore that it should abandon the fight would wake up soon thereafter only to discover that the cost of accepting the permanent presence of drugs is incalculably greater.

THE WHITE HOUSE

WASHINGTON

May 8, 1984

MEMORANDUM FOR BRANDEN BLUM
LEGISLATIVE ATTORNEY
OFFICE OF MANAGEMENT AND BUDGET

FROM: JOHN G. ROBERTS
ASSOCIATE COUNSEL TO THE PRESIDENT

SUBJECT: Draft State Testimony on H.R. 4853, a Bill Authorizing the Attorney General to Grant Permanent Resident Status for Certain Cuban/Haitian Aliens, and for Other Purposes

Counsel's Office has reviewed the above-referenced testimony, and finds no objection to it from a legal perspective.

ID # [redacted] CU

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CORRESPONDENCE TRACKING WORKSHEET

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Name of Correspondent: James C. Thurr

☐ MI Mail Report **User Codes:** (A) _____ (B) _____ (C) _____

Subject: Draft State Testimony re H.R. 4853, a bill authorizing the Attorney General to grant permanent resident status for certain Cuban/Haitian aliens, and for other purposes

ROUTE TO: Office/Agency (Staff Name)	Action Code	Tracking Date YY/MM/DD	Type of Response	Code	Completion Date YY/MM/DD
(W) Holland	ORIGINATOR	84/10/5 07			1 1
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F - Furnish Fact Sheet to be used as Enclosure
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EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

SPECIAL

May 7, 1984

LEGISLATIVE REFERRAL MEMORANDUM

TO: LEGISLATIVE LIAISON OFFICER

Department of Justice
Department of Health and Human Services
National Security Council

SUBJECT: Draft State testimony on H.R. 4853, a bill authorizing the Attorney General to grant permanent resident status for certain Cuban/Haitian aliens, and for other purposes

The Office of Management and Budget requests the views of your agency on the above subject before advising on its relationship to the program of the President, in accordance with OMB Circular A-19.

Please provide us with your views no later than COB May 7, 1984. (NOTE: A hearing is scheduled for 5/9/84.)

Direct your questions to Branden Blum (395-3802), the legislative attorney in this office.

Gregory h Jones for

James C. Murr for
Assistant Director for
Legislative Reference

Enclosure

cc: K. Collins
F. Fielding
J. Cooney
S. Gates
M. Uhlmann
S. Malm
P. Woodworth

STATEMENT BY PRINCIPAL DEPUTY ASSISTANT SECRETARY OF STATE FOR INTER-AMERICAN AFFAIRS, JAMES H. MICHEL, MAY 9, 1984

H.R. 4853: "A BILL TO AUTHORIZE THE CREATION OF A RECORD OF ADMISSION FOR PERMANENT RESIDENCE IN THE CASES OF CERTAIN NATIVES OF CUBA AND HAITI, AND FOR OTHER PURPOSES."

MR. CHAIRMAN, IT IS A PLEASURE TO ACCEPT YOUR INVITATION TO PRESENT THE VIEWS OF THE DEPARTMENT OF STATE ON H.R. 4853, "A BILL TO AUTHORIZE THE CREATION OF A RECORD OF ADMISSION FOR PERMANENT RESIDENCE IN THE CASES OF CERTAIN NATIVES OF CUBA AND HAITI, AND FOR OTHER PURPOSES."

YOU WILL ALREADY HAVE RECEIVED FROM ASSISTANT SECRETARY W. TAPLEY BENNETT A REPORT OF THE POSITION OF THE DEPARTMENT OF STATE ON BOTH SECTIONS OF THE PROPOSED LEGISLATION. IF I MAY BE PERMITTED TO SUM UP THE SENSE OF THAT REPORT, IT WAS TO INFORM THE COMMITTEE THAT IN OUR VIEW THE PROVISIONS OF SECTION 1 OF H.R. 4853 ARE SUBSTANTIALLY IDENTICAL TO ~~THE~~ PROVISIONS OF [~~SECTION 301 OF H.R. 1510~~] (the immigration reform legislation currently being considered by Congress) INSOFAR AS THEY RELATE TO HAITIANS AND CUBANS, EXCEPT THAT [~~THERE IS NO PROVISION IN SECTION 301 OF H.R. 1510 FOR~~] (H.R. 4853 contains an additional provision) GRANTING A RETROACTIVE DATE OF ADMISSION--JANUARY 1, 1982--FOR PERMANENT RESIDENCE. THE DEPARTMENT OF STATE HAS RESERVATIONS ABOUT THE RETROACTIVE ASPECT OF SECTION 1 OF H.R. 4853. ALTHOUGH RETROACTIVE DATES OF ADMISSION HAVE BEEN APPROVED IN CERTAIN PAST INSTANCES, IN THIS CASE THE RETROACTIVE ADMISSION WOULD ~~NOT~~ BE AVAILABLE (only to the Haitians and Cubans but not TO ANY OF THE (other) NATIONALITIES WHICH WOULD BE LEGALIZED UNDER [~~H.R. 1510 EXCEPT HAITIANS AND CUBANS.~~] (pending immigration reform legislation. Insert (A) ~~OTHERWISE WE HAVE NO SUBSTANTIVE OBJECTION TO SECTION 1, BUT WE DEFER TO THE COMMENTS OF THE DEPARTMENT OF JUSTICE.~~

Insert A

The Department of State believes that immigration reform and relief for specific ~~groups~~ groups of illegal entrants should not be accomplished in a piecemeal fashion. Instead, immigration statutes must be applied evenly without regard to nationality or country of origin. For these reasons, while we have no objection to the intent of H.R. 4853 to provide residence for Cuban and Haitian nationals, we take the position that the preferable response rests with enactment of immigration reform legislation currently being considered by Congress. We defer, however, to the comments of the Department of Justice concerning the retroactive aspect of section 1.

THE DEPARTMENT STRONGLY OPPOSES THE ENACTMENT OF SECTION 2 OF H.R. 4853. THIS SECTION WOULD DIRECT CONSULAR OFFICERS AT THE UNITED STATES INTERESTS SECTION IN HAVANA, CUBA, TO PROCESS IMMIGRANT VISA APPLICATIONS NOTWITHSTANDING THE PROVISIONS OF SECTION 243(G) OF THE IMMIGRATION AND NATIONALITY ACT. MR. CHAIRMAN, AS THIS COMMITTEE IS AWARE, THE ATTORNEY GENERAL HAS NOTIFIED THE SECRETARY OF STATE PURSUANT TO SECTION 243(G) OF THE ACT THAT CUBA HAS DENIED OR UNDULY DELAYED ACCEPTANCE OF THE RETURN OF ALIENS WHO ARE NATIONALS, CITIZENS, SUBJECTS OR RESIDENTS OF CUBA. AS PROVIDED FOR BY SECTION 243(G) THE DEPARTMENT HAS DIRECTED CONSULAR OFFICERS AT THE U.S. INTERESTS SECTION IN HAVANA NOT TO PROCESS IMMIGRANT VISA APPLICATIONS, EXCEPT THOSE WHICH HAVE BEEN EXEMPTED FROM THIS PROHIBITION BY REGULATIONS OF THE IMMIGRATION AND NATURALIZATION SERVICE. BY THIS I MEAN THAT THE INTERESTS SECTION IS CONTINUING TO PROCESS APPLICATIONS OF IMMEDIATE RELATIVES AS DEFINED IN SECTION 201(B) OF THE ACT AND OF RETURNING RESIDENT IMMIGRANTS AS DEFINED IN SECTION 101(A) (27) (A) OF THE ACT.

SECTION 2 OF H.R. 4853 WOULD HAVE THE EFFECT OF NULLIFYING SECTION 243(G) OF THE ACT INSOFAR AS IT RELATES TO CUBA.

MR. CHAIRMAN, THE QUESTION OF THE ISSUANCE OF IMMIGRANT VISAS IN THE U.S. INTERESTS SECTION IN HAVANA IS CLOSELY RELATED TO THE ACTION OF THE CUBAN GOVERNMENT IN 1980 WHEN IT PERMITTED THE MASS EXODUS OF PERSONS FROM MARIEL, CUBA, AND

RELEASED FROM DETENTION COMMON CRIMINALS AND MENTALLY ILL PERSONS FOR THE PURPOSE OF EXPELLING THEM TO THE UNITED STATES WITHOUT THE KNOWLEDGE OR CONSENT OF OUR GOVERNMENT. THIS ACTION BY THE GOVERNMENT OF CUBA HAS DONE CONSIDERABLE HARM TO THE SOCIAL FABRIC OF THE UNITED STATES, PARTICULARLY IN THOSE COMMUNITIES TO WHICH LARGE NUMBERS OF THESE EXCLUDABLE ALIENS MIGRATED. THE COST TO FEDERAL, STATE AND LOCAL GOVERNMENTAL AGENCIES IN THE UNITED STATES HAS BEEN IMMENSE, NOT TO MENTION THE BURDEN BORNE BY THE VICTIMS OF CRIMES WHICH HAVE BEEN COMMITTED IN THE UNITED STATES. SECTION 1 OF H.R. 4853 TAKES ACCOUNT OF THESE PERSONS AND PROVIDES THAT AN OTHERWISE ELIGIBLE BENEFICIARY COULD NOT BENEFIT FROM THE LAW IF HE WERE DETERMINED TO BE AN ALIEN WHO CONSTITUTES A DANGER TO THE COMMUNITY OF THE UNITED STATES BECAUSE OF PAST CRIMINAL ACTIVITY OR WHERE THERE EXIST REASONABLE GROUNDS FOR REGARDING HIM AS A DANGER TO THE SECURITY OF THE UNITED STATES.

MR. CHAIRMAN DURING THE LAST MONTH OF THE CARTER ADMINISTRATION THERE WERE TWO ROUNDS OF TALKS BETWEEN REPRESENTATIVES OF THE GOVERNMENT OF THE UNITED STATES AND THE GOVERNMENT OF CUBA CONCERNING THE REQUEST OF THE UNITED STATES THAT CUBA TAKE BACK ITS NATIONALS, CITIZENS, SUBJECTS OR RESIDENTS WHO WERE INELIGIBLE TO REMAIN IN THE UNITED STATES FOR SUBSTANTIVE REASONS. THE GOVERNMENT OF CUBA, WHICH DID NOT ACKNOWLEDGE ANY RESPONSIBILITY TO TAKE BACK THESE PERSONS, ESTABLISHED TWO CONDITIONS FOR TAKING BACK ANY OF THEM: FIRST,

THE CUBAN GOVERNMENT WOULD CONSIDER THE ACCEPTANCE OF ONLY THOSE WHO WISHED TO RETURN VOLUNTARILY, AND SECOND THE RETURN OF ANY SUCH INDIVIDUALS WOULD BE SUBJECT TO APPROVAL BY THE GOVERNMENT OF CUBA ON A CASE-BY-CASE BASIS. ALTHOUGH THE UNITED STATES WAS WILLING AT THAT TIME TO RESUME ISSUANCE OF IMMIGRANT VISAS IN THE U.S. INTERESTS SECTION IN HAVANA IF AN AGREEMENT HAD BEEN REACHED, IT COULD NOT ACCEPT THE CONDITIONS ESTABLISHED BY CUBA. WHILE I DO NOT WISH TO GO INTO DETAIL WHY THE CUBAN CONDITIONS WERE NOT ACCEPTABLE, I SHOULD LIKE TO POINT OUT, MR. CHAIRMAN, THAT ONLY A MINUSCULE MINORITY OF THE 129,000 PERSONS WHO CAME WITH THE MARIEL BOATLIFT HAVE EVER INDICATED THAT THEY WISH TO RETURN TO CUBA. TO HAVE ACCEPTED THE CUBAN CONDITIONS WOULD NOT HAVE SOLVED THE PROBLEM OF THE MARIEL EXCLUDABLES.

WHEN THE SUBJECT OF RETURNING THE MARIEL BOATLIFT EXCLUDABLES WAS RAISED THROUGH DIPLOMATIC CHANNELS WITH CUBA IN THE PERIOD AFTER JANUARY, 1981, THE CUBAN GOVERNMENT INITIALLY MADE KNOWN THAT THERE HAD BEEN NO CHANGE IN THE CUBAN POSITION ON THE TWO CONDITIONS.

NEVERTHELESS, THE DEPARTMENT OF STATE ON MAY 25, 1983, ASKED CUBA FORMALLY TO TAKE BACK THOSE PERSONS FROM THE MARIEL BOATLIFT FOUND INELIGIBLE TO REMAIN IN THE UNITED STATES FOR SUBSTANTIVE REASONS, ALONG WITH THOSE PERSONS WHO MIGHT WISH TO RETURN TO CUBA VOLUNTARILY. AT THE SAME TIME CUBA WAS FORMALLY

GIVEN A LIST OF THE 789 SUCH PERSONS AGAINST WHOM FINAL ORDERS OF EXCLUSION HAD BEEN ENTERED AT THAT TIME AND WAS TOLD THAT ONCE THOSE PERSONS HAD BEEN RETURNED, MORE SUCH LISTS WOULD FOLLOW. IN RETURN, CUBA WAS TOLD, THE UNITED STATES WOULD BE PREPARED TO RENEW THE PROCESSING OF IMMIGRANT VISAS IN THE U.S. INTERESTS SECTION IN HAVANA.

MR. CHAIRMAN, SINCE THE POSSIBLE RETURN OF THESE PERSONS TO CUBA IS STILL A SUBJECT FOR DISCUSSION BETWEEN THE GOVERNMENTS OF THE UNITED STATES AND CUBA, I DO NOT WISH TO MAKE FURTHER PUBLIC COMMENT ON THIS ISSUE. THE DEPARTMENT OF STATE IS PREPARED TO PROVIDE YOUR COMMITTEE WITH A CLASSIFIED COMMENTARY ON DEVELOPMENTS SINCE MAY, 1983, IN THIS REGARD. I DO WISH TO MAKE CLEAR FOR THE RECORD, HOWEVER, THAT THERE REMAINS A DIRECT AND VITAL LINK BETWEEN THE POSSIBLE RETURN OF THE EXCLUDABLES TO CUBA AND THE RESUMPTION OF THE ISSUANCE OF IMMIGRANT VISAS BY THE U.S. INTERESTS SECTION IN HAVANA.

I CAN UNFORTUNATELY GIVE NO ASSURANCE THAT CUBA WILL PROVE ANY MORE WILLING TO ACCEPT THE RETURN OF ITS NATIONALS AT THE REQUEST OF THE UNITED STATES THAN IT WAS IN DECEMBER 1980 AND JANUARY 1981. I CAN STATE, HOWEVER, THAT IF SECTION 2 OF H.R. 4853 WERE TO BE ENACTED INTO LAW, THE CHANCE THAT WE COULD PERSUADE CUBA TO ACCEPT THE RETURN OF THE MARIEL EXCLUDABLES WOULD BE VIRTUALLY NON-EXISTENT.

IT MAY BE ARGUED THAT INNOCENT PERSONS IN THE UNITED STATES AND CUBA, THE SPONSORS OF WOULD-BE IMMIGRANTS AND THE IMMIGRANTS THEMSELVES, SHOULD NOT BE ASKED TO PAY FOR THE MISDEEDS OF THE GOVERNMENT OF CUBA. I CAN WELL UNDERSTAND AND SYMPATHIZE WITH THAT POINT OF VIEW. SOME OF THESE PERSONS ARE PRESENTLY ENTERING THE UNITED STATES THROUGH ISSUANCE OF VISAS BY OUR EMBASSIES IN THIRD COUNTRIES, BUT OF COURSE THIS IS ONLY A MINORITY OF THOSE WHO WOULD OTHERWISE BE ELIGIBLE.

THE FACT IS, HOWEVER, MR. CHAIRMAN, THAT THE GOVERNMENT OF CUBA STANDS TO DERIVE CONSIDERABLE ECONOMIC ADVANTAGE IF THE UNITED STATES RESUMES THE PROCESSING OF IMMIGRANT VISAS IN HAVANA. IN PARTICULAR, THE CUBAN GOVERNMENT, WHICH CHARGES VERY HIGH FEES IN CONVERTIBLE CURRENCY FOR THE NECESSARY DOCUMENTATION TO LEAVE CUBA, WOULD STAND TO GAIN SIGNIFICANT REVENUES. IF EMIGRATION FROM CUBA TO THE UNITED STATES WERE TO RISE TO 20,000 PERSONS PER YEAR, WE ESTIMATE THAT CUBA MIGHT WELL EXPECT TO EARN 30 MILLION DOLLARS IN CONVERTIBLE CURRENCY PER ANNUM FROM CHARGES FOR EXIT PERMITS AND OTHER DOCUMENTS. THUS CUBA HAS A VERY REAL STAKE IN THIS ISSUE.

IT IS CLEAR THAT CONGRESS, WHEN IT ENACTED THE IMMIGRATION AND NATIONALITY ACT, INTENDED THAT THE UNITED STATES SHOULD NOT ISSUE IMMIGRANT VISAS IN THOSE STATES WHICH REFUSE UPON REQUEST TO TAKE BACK THEIR NATIONALS, CITIZENS, SUBJECTS OR RESIDENTS WHO ARE NOT ADMISSIBLE TO THE UNITED STATES, OR WHO DELAY SUCH

ACTION. THE INTENT OF SECTION 2 OF H.R. 4853, TO RESUME NORMAL IMMIGRANT VISA PROCESSING IN HAVANA, IS AN OBJECTIVE WHICH THE ADMINISTRATION SHARES. BUT SUCH RESUMPTION SHOULD FOLLOW, NOT PRECEDE, A DECISION BY THE GOVERNMENT OF CUBA TO ACCEPT THE RETURN OF THE MARIEL EXCLUDABLES AS PROPOSED BY THE GOVERNMENT OF THE UNITED STATES.

FOR THESE REASONS, MR. CHAIRMAN, THE DEPARTMENT OF STATE IS STRONGLY OPPOSED TO SECTION 2 OF H.R. 4853 AND URGES THAT IT BE REMOVED FROM THE BILL.

THE WHITE HOUSE

WASHINGTON

April 27, 1984

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS

SUBJECT: Draft State Report on H.R. 4853, a Bill Authorizing the Attorney General to Grant Permanent Resident Status for Certain Cuban/Haitian Aliens, and for Other Purposes

OMB has asked for our views by close of business today on a proposed State Department report on H.R. 4853. There are two parts to this bill: section one would authorize the Attorney General to grant permanent resident status to certain Cuban and Haitian illegal aliens; section two would direct consular officers at the U.S. Interests Section in Havanna to process visa applications pending at that office.

With respect to section one, the draft State report simply defers to the Department of Justice. This is appropriate, since section one is entirely concerned with the actions of the Attorney General and the Immigration and Naturalization Service within the Justice Department.

The draft State report strongly opposes section two of the bill. The Immigration and Nationality Act currently provides that if a country refuses to take back its citizens who are denied admission to the United States, U.S. consular officials in that country are to cease processing visa applications (except for those of immediate relatives of U.S. citizens). Cuba, of course, refuses to take back the excludable Marielitos, and accordingly our consular officers in Havanna no longer process Cuban visa applications. Section two of this bill would waive the pertinent provisions of the Act, and require processing of visas in Havanna. The State report, in opposing section two, notes that the U.S. and Cuba are engaged in negotiations over the return of the excludable Marielitos. Enactment of section two would remove the only leverage the U.S. has in these negotiations.

I have reviewed the proposed State report, and have no objections.

Attachment

THE WHITE HOUSE

WASHINGTON

April 27, 1984

MEMORANDUM FOR BRANDEN BLUM
LEGISLATIVE ATTORNEY
OFFICE OF MANAGEMENT AND BUDGET

FROM: FRED F. FIELDING /RAH for
COUNSEL TO THE PRESIDENT

SUBJECT: Draft State Report on H.R. 4853, a Bill Authorizing the Attorney General to Grant Permanent Resident Status for Certain Cuban/Haitian Aliens, and for Other Purposes

Counsel's Office has reviewed the above-referenced proposed State report, and finds no objection to it from a legal perspective.

FFF:JGR:aea 4/27/84
cc: FFFielding/JGRoberts/Subj/Chron

ID # _____ CU

WHITE HOUSE
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Subject: Draft State Report and H.R. 4853, a bill Authorizing the Attorney General to grant permanent resident status for certain Cuban/Haitian Aliens, and for other purposes

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

SPECIAL

April 24, 1984

LEGISLATIVE REFERRAL MEMORANDUM

TO: LEGISLATIVE LIAISON OFFICER

Department of Justice
Department of Health and Human Services
National Security Council

SUBJECT: Draft State report and H.R. 4853, a bill authorizing the Attorney General to grant permanent resident status for certain Cuban/Haitian aliens, and for other purposes.

The Office of Management and Budget requests the views of your agency on the above subject before advising on its relationship to the program of the President, in accordance with OMB Circular A-19.

Please provide us with your views no later than

April 27, 1984. (NOTE: A hearing is tentatively scheduled for May 7, 1984).

Direct your questions to Branden Blum (395-3802), the legislative attorney in this office.

James C. Murr for
Assistant Director for
Legislative Reference

Enclosure

cc: K. Collins
P. Woodworth
S. Malm
J. Cooney
F. Fielding
M. Uhlmann
S. Gates

United States Department of State

Washington, D.C. 20520

Dear Mr. Chairman:

The Secretary has asked me to reply to your recent letter enclosing for the Department's study and report a copy of H.R. 4853, "A bill to authorize the creation of a record of admission for permanent residence in the cases of certain natives of Cuba and Haiti, and for other purposes."

Section 1(a) of the bill would authorize the Attorney General to grant adjustment of status to permanent resident to an alien described in section 1(b) of the bill if the alien applied for adjustment of status within two years following enactment of the bill and was in the United States at the time of filing the application for adjustment of status. In addition, the alien would have to establish his admissibility for permanent residence; except that in determining such admissibility the provisions relating to labor certification, public charge, immigrant visa and passport documentation, illiteracy and the exclusion of certain foreign medical graduates would not apply. Finally, an otherwise eligible beneficiary could not benefit from this provision if he were determined to be an alien (1) who ordered, incited, assisted, or otherwise participated in the persecution of any person on account of race, religion, nationality, membership in a particular social group, or political opinion; (2) who constitutes a danger to the community of the United States because of a conviction of a particularly serious crime; (3) who there are serious reasons for believing has committed a serious nonpolitical crime outside the United States prior to arrival in the United States; or (4) whom there are reasonable grounds for regarding as a danger to the security of the United States.

The Honorable
Peter W. Rodino, Jr., Chairman,
Committee on the Judiciary,
House of Representatives.

Section 1(b) defines the beneficiary class as (1) any alien who has received an immigration designation as a Cuban/Haitian entrant (status pending), or (2) any other national of Cuba or Haiti who arrived in the United States before January 1, 1982, and for whom any record was established by the Immigration and Naturalization Service before that date.

Section 1(c) of the bill would deny the benefits of section 1(a) of the bill to an alien who otherwise qualified as a member of the beneficiary class if the alien was inspected and admitted as a nonimmigrant alien unless the alien filed an application for asylum prior to January 1, 1982.

Section 1(d) would provide that aliens granted permanent residence under the provisions of the bill would nonetheless retain the special status provided for them in section 501(d)(1) of Public Law 96-422. That section relates to the expenditure of Federal funds for certain benefits and assistance to members of the beneficiary class.

Section 1(e) of the bill would direct the Attorney General to record the admission for permanent residence of any alien granted permanent residence pursuant to section 1(a) of the bill as of January 1, 1982. This provision would expedite the eligibility for naturalization of such aliens by fixing their date of admission at a time which could be more than four years in the past by the time the statutory period for seeking the benefits of section 1(a) had run.

Section 1(f) would exempt grants of adjustment of status under section 1(a) of the bill from the numerical limitations on immigration.

Section 1(g) of the bill would make the standard references to the applicability of the provisions of the Immigration and Nationality Act and would specify that a member of the beneficiary class of this bill also remains entitled to acquire permanent residence under any other provision of law pursuant to which he might qualify for such status.

These provisions are substantially identical with the provisions of section 301 of H.R. 1510 insofar as they relate to members of the beneficiary class, except that there is no provision in section 301 of H.R. 1510 for granting a retroactive date of admission for permanent residence. While the Department has reservations about the retroactive aspect of section 1 of the bill, it otherwise perceives no objection to enactment of section 1, but will defer to the comments of the Department of Justice with respect thereto.

Section 2 of the bill would direct consular officers stationed at the United States Interests Section (USINT) at Havana, Cuba, to process immigrant visa applications pending at that office notwithstanding the provisions of section 243(g) of the Act. As you are aware, the Attorney General has notified the Secretary of State pursuant to section 243(g) of the Act that Cuba has denied or unduly delayed acceptance of the return of aliens who are nationals, citizens, subjects or residents of Cuba. As provided for by section 243(g), the Department has directed consular officers at USINT Havana to cease processing immigrant visa applications, except those which have been exempted from this prohibition by regulations of the Immigration and Naturalization Service (i.e., applications of immediate relatives as defined in section 201(b) of the Act and of returning resident immigrants as defined in section 101(a)(27)(A) of the Act).

Section 2 of the bill would have the effect of ~~n~~ullifying section 243(g) of the Act insofar as it relates to Cuba. As the Department interprets section 2, it would afford no special benefits to the aliens concerned but would rather direct only that their applications be processed in accordance with world-wide requirements and procedures which would apply absent the Attorney General's notification.

The Department strongly opposes enactment of section 2 of the bill. As you know, the United States last summer proposed to the Government of Cuba the expeditious return to that country of those Mariel Cubans who are excludable from the United States for substantive reasons. This initiative is being actively pursued with Cuba and enactment of section 2 of the bill would have a most detrimental effect by removing an important element in the negotiating process. It is the Department's judgment that enactment of this provision could eliminate any possibility for reaching an acceptable agreement with Cuba on this matter. Accordingly, the Department urges that section 2 of the bill not be enacted.

The Office of Management and Budget advises that from the standpoint of the Administration's program there is no objection to the submission of this report.

Sincerely,

W. Tapley Bennett, Jr.
Assistant Secretary
Legislative and Intergovernmental Affairs

THE WHITE HOUSE

WASHINGTON

May 2, 1984

MEMORANDUM FOR BRANDEN BLUM
LEGISLATIVE ATTORNEY
OFFICE OF MANAGEMENT AND BUDGET

FROM: JOHN G. ROBERTS JGR
ASSOCIATE COUNSEL TO THE PRESIDENT

SUBJECT: Statement of Alan C. Nelson Concerning H.R. 4853 -- Permanent Residence for Cubans and Haitians

Counsel's Office has reviewed the above-referenced testimony, and finds no objection to it from a legal perspective.

ID # ________________ CU

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John

Name of Correspondent: Yolanda Branche

☐ **MI Mail Report** **User Codes:** (A) ________ (B) ________ (C) ________

Subject: Statement of Alan C. Nelson concerning H.R. 4853 - Permanent Residence for Cubans and Haitians

ROUTE TO: ACTION DISPOSITION

Office/Agency (Staff Name)	Action Code	Tracking Date YY/MM/DD	Type of Response	Code	Completion Date YY/MM/DD
[illegible]	ORIGINATOR	84/05/01			/ /
	Referral Note: Please [illegible]				
WHT18	R	84/05/01		S	84/05/03
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- A - Appropriate Action
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- S - For Signature
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DISPOSITION CODES:
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U.S. Department of Justice
Office of Legislative and
Intergovernmental Affairs

Office of the
Assistant Attorney General

Washington, D.C. 20530

SPECIAL

May 1, 1984

TO: Branden Blum, OMB

FR: Yolanda Branche, OLIGA
633-2111

RE: Revised Statement on H.R. 4853 - Permanent Residence for Cubans and Haitians

Attached is a copy of the Department's revised statement for May 9, 1984 before the House Subcommittee on Immigration, Refugees and International Law for your review.

cc: Fred F. Fielding

REVISED

DRAFT

STATEMENT

OF

ALAN C. NELSON
COMMISSIONER
IMMIGRATION AND NATURALIZATION SERVICE

BEFORE

THE

COMMITTEE ON THE JUDICIARY
SUBCOMMITTEE ON IMMIGRATION, REFUGEES AND INTERNATIONAL LAW
HOUSE OF REPRESENTATIVES

CONCERNING

H.R. 4853 - PERMANENT RESIDENCE FOR CUBANS AND HAITIANS

ON

MAY 9, 1984

Mr. Chairman, members of the subcommittee:

I am pleased to be here today to offer the views of the Department of Justice on H.R. 4843.

The bill proposes to authorize the creation of a record of admission for permanent residence in the cases of certain nationals of Cuba and Haiti.

It is estimated that the number of people who may be eligible for the benefits of the proposed legislation, is 131,000. This number includes approximately 100,000 nationals of Cuba and 31,000 nationals of Haiti. Approximately 120,000 of those eligible would have entered the United States during the time period when they could be given the status of "Cuban/Haitian Entrant-Status Pending," and 11,000 arrived after that time period and before the cut-off date specified in the proposed legislation. The vast majority of the eligible individuals currently reside in New York, New Jersey, and Florida.

The Department of Justice strongly believes that immigration reform and relief for specific groups of illegal entrants should not be accomplished in a piecemeal fashion. We endorse the trend that this subcommittee and Congress as a whole have followed away from nationality-specific legislation. This Administration holds, as I believe you do, that our immigration statutes must be applied evenly without regard to nationality or country of origin. For these reasons, while we support the intent of H.R. 4853 to provide residence for Cuban and Haitian nationals, we continue to take the position that the preferable response rests with enactment of the Simpson-Mazzoli; immigration reform legislation, H.R. 1510. Until the outcome of the House's consideration of H.R. 1510 is established, we believe it is premature to take a position on H.R. 4853.

This Administration has consistently supported the concept of comparable relief for Cuban and Haitian nationals who entered the country illegally and were given the administrative designation, Cuban-Haitian entrants. The Administration's immigration reform bill introduced in 1981 contained provisions for the legalization of these Cuban Haitian entrants. We have continued to support similar provisions for legalization under the Simpson-Mazzoli reform legislation.

I would also like to raise three technical concerns with the language of H.R. 4853. The Department of Justice takes the position that the nationals of Cuba who would be covered by the provisions of this bill are also currently eligible for the provisions of Public Law 89-732, the Cuban Refugee Adjustment Act of 1966. H.R. 4853 does not repeal P.L. 89-732, and therefore would afford nationals of Cuba an opportunity to choose between the two pieces of legislation. We believe nationals of Cuba would choose adjustment under the provisions of P.L. 89-732 as those provisions are more beneficial in terms of effective date of permanent residence. To implement H.R. 4853 without the repeal of P.L. 89-732 would treat nationals of Cuba differently than nationals of Haiti.

The second concern revolves around the wording of section (b) (2) of H.R. 4853. This section provides permanent residence for an alien who "is a national of Cuba or Haiti, arrived in the United States before January 1, 1982, and with respect to whom any record was established by the Immigration and Naturalization Service before January 1, 1982." It is our feeling that the term "any record" is ambiguous, and the subcommittee's clear intention as to what is to be interpreted as a "record" should be included in the proposal.

The Department of Justice also has some concern about Section 2 of the proposed legislation. While we normally defer to the Department of State on issues such as this, in this particular instance, the Committee should be aware that the Attorney General has notified the Secretary of State, pursuant to Section 243(g) of the INA, that Cuba has denied and unduly delayed acceptance of the return of its nationals. This is an issue between the Government of the United States and the Government of Cuba in

the matter of the return of certain Cuban nationals who have been found excludable. Since these matters constitute the conduct of foreign affairs, we do not believe that legislation should be enacted impinging upon these activities.

This completes my prepared testimony. I would be glad to respond to any questions which you may have.

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Name of Correspondent: James Mizer

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Subject: Draft Justice (INS - Nelson) testimony on H.R. 4853, a bill authorizing the Attorney General to grant permanent resident status to certain aliens, and for other purposes

ROUTE TO: Office/Agency (Staff Name)	Action Code	Tracking Date YY/MM/DD	Type of Response	Code	Completion Date YY/MM/DD
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5/81

Los Angeles Times

DATE: 4-27-84

PAGE: Part II p. 6

Let the People Go

Citizens of a free country ought to be free to travel where they please. Freedom to travel is a precious right that, barring an emergency, should not be restricted by the government. That was the basic issue brought before the U.S. Supreme Court this week in a challenge to the Reagan Administration's restrictions on travel to Cuba.

In 1963 the government banned travel to Cuba, but 14 years later the Carter Administration lifted the restrictions. In 1982 the Reagan Administration imposed new controls that made it illegal for American tourists to spend hard currency on travel-related expenses in Cuba. While not specifically banning travel to Cuba, the rules had the effect of cutting off ordinary tourist travel to the island.

This was necessary, the Administration contended, to deny Cuba the hard currency that it wants to "finance destabilizing activity in Central America and the Caribbean region." But a federal appeals court said a year ago that the Administration had no authority to impose new limits on travel without declaring a new national emergency and consulting Congress. This is an issue that the Supreme Court must resolve, yet beyond the legal dispute is the question of the wisdom of the Administration's action. Only a relatively small sum, about $8 million annually, is involved. That scarcely justifies an infringement on the freedom to travel, and it throws a strange light on our criticism of the Soviet Union and Soviet Bloc nations for imposing travel restraints on their citizens.

The Administration's Cuban policy is consistent with its narrow view of the right of Americans to hear the opinions of controversial foreign speakers. Visas have been denied to many political leaders, scholars, authors and scientists on ideological grounds, although a 1977 amendment to the discredited McCarran-Walter Act gave the executive the authority to waive a political test of foreign visitors. The only legitimate test is one that applies to conduct, not belief. Suspected spies, terrorists and criminals should be barred. Others should not have to submit to a political quiz, which is an explicit affront to the ability of the American people to listen to all views and reach their own judgment without the patronizing help of government.

The New York City Bar Assn. put it this way: "It is incongruous to exclude advocates of communist or other ideologies when their domestic counterparts run for public office and enjoy the right of free speech, and hypocritical to do so while we boast . . . of that domestic freedom."

(22)