

Withdrawal/Redaction Sheet

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. email	Eric Schwartz to Richard Clarke, et al., re: fyi: more memos for Berger mtg with Pres (3 pages)	03/09/1993	P1/b(1)
002. email	Eric Schwartz to Richard Feinberg, re: Insters for Sandy's Haiti update memo to the President (2 pages)	04/07/1993	P1/b(1)
003. memo	Eric Schwartz to Barbro Owens-Kirkpatrick and Alan Kreczko (5 pages)	04/16/1993	P5 6392
004. email	Eric Schwartz to Alan Kreczko, re: PDD (5 pages)	06/14/1993	P1/b(1)
005. email	Eric Schwartz to Lawrence Rossin, re: For your concurrence (3 pages)	09/02/1993	P1/b(1), P5
006. email	Eric Schwartz to Lawrence Rossin and Barbro Owens-Kirkpatrick, re: please for your comments quick (7 pages)	04/21/1994	P1/b(1), P5
007. email	From Victor Rocha, re: Cuba Speech (draft 5) (4 pages)	09/16/1994	P1/b(1)
008. email	From Kathleen Cooper, re: Cuba Speech (draft 5) (4 pages)	09/16/1994	P1/b(1)
009. email	From Kathleen Cooper, re: Cuba Speech (draft 5) (4 pages)	09/16/1994	P1/b(1)

COLLECTION:

Clinton Presidential Records
NSC Emails
A1 - Record (Jan 93 - Sept 94) ([Immigration and Naturalization])
OA/Box Number: 570000

FOLDER TITLE:

[02/23/1993 - 09/16/1994]

2011-1044-F
ke1370

RESTRICTION CODES

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

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

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

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

RR. Document will be reviewed upon request.

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

- b(1) National security classified information [(b)(1) of the FOIA]
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- b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
- b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

NATIONAL SECURITY COUNCIL

16-Apr-1993 14:33 EDT

UNCLASSIFIED

MEMORANDUM FOR:

Barbro A. Owens-Kirkpatrick
Alan J. Kreczko

(OWENS)
(KRECZKO)

FROM:

Eric P. Schwartz
(SCHWARTZ)

SUBJECT:

Action 2475I -- request for concurrence by COB today

INFORMATION

MEMORANDUM FOR THE PRESIDENT

FROM:

ANTHONY LAKE
SAMUEL BERGER

SUBJECT:

Remaining HIV-positive Haitians at Guantanamo Bay,
Cuba

I. CURRENT SITUATION

There are now 187 Haitians at Guantanamo Bay, Cuba. There are some 162 adults, nearly all of whom are HIV-positive, and about 25 children. The small numbers of HIV-negative Haitians on Guantanamo include spouses and children of those who are HIV-positive.

Since you assumed office, some 80 Haitians have been permitted entry to the United States to pursue asylum claims. Between January 20 and March 26, the Attorney General permitted entry for Haitians who could not obtain adequate diagnostic treatment or medical care at facilities on Guantanamo, for women in the latter stages of pregnancy, and for those with severely advanced deterioration of their immune system.

On March 26, a New York District Court judge found that a larger class of Haitians were being denied "adequate" medical care on Guantanamo: those with "T-Cell" counts (a measure of the strength of the immune system) below 200 and with T-Cell percentages of 13% or below. (According to the Center for Disease Control, such persons are considered to have AIDS.) Based on an asserted right to protect the class involved in the litigation, he ordered that the Government provide adequate care. Rather than seek a stay of the order, you chose to permit entry for the entire class affected by the Court order, which numbered

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about 45.

It is worth noting that there has been no adverse reaction from conservatives in Congress, from the press or from the public about the entry of this population. This may be because the press reported that you acted to comply with a Court order but did not report that compliance meant deciding against seeking a stay. At the same time, you did receive some credit from liberals on the Hill, refugee advocacy groups and Jesse Jackson, all of whom were aware that you could have contested the order but chose not to.

II. NEXT STEPS IN THE LITIGATION

A final decision and order in the New York Federal District Court case involving these Haitians is pending. At issue is whether these Haitians -- despite their being outside the United States -- are entitled to due process rights (including the right to counsel) guaranteed by the Constitution. While we believe that the Court will probably rule against the Government, it isn't clear what remedy the Court will order. The Court could simply order that the plaintiffs be guaranteed continuous access to counsel, which would amount to requiring that we expand the access we already grant as a matter of policy. The Court could go further and order that we process these Haitians for refugee status and then release them from custody (presumably, that might permit us to return non-refugees to Haiti). Or the Court could decide that all of the Haitians are arbitrarily detained and should be released by a date certain.

Depending on what the Court orders us to do, a negative Court decision could conceivably provide you with an "opportunity" similar to that presented by the interim court order; that is, to permit entry to some or all the Haitians in "compliance" with an order, while keeping open the Government's option to appeal the legal issues in the case.

Unfortunately, it is unclear when the District Court will rule. One of the Government litigators believes a ruling will come within the next several weeks. Another believes that the District Court may await the Supreme Court ruling on the legality of directly returning Haitians without interviewing them prior to return. A Supreme Court ruling affirming the legality of that practice might make moot the legal issues in this case, but would not solve the political/humanitarian problem of what to do with these Haitians on Guantanamo.

III. PERMITTING ENTRY FOR ONE OR MORE ADDITIONAL GROUPS OF HAITIANS FROM GUANTANAMO

You have asked for information on additional groups of Haitians who might be admitted for medically related reasons. We have identified a number of categories that relate both to medical and humanitarian considerations. (Note that there will be some overlap in these groups -- some of the Haitians will be members of more than one of these categories.)

A. HIV-positive Haitians with T-Cell counts below 500

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The judge's interim order resulted in entry for all Haitians with T-Cell counts of 200 or below, as well as for those with T-Cell percentages of 13% or below. As a matter of policy, we could expand the category of Haitians permitted entry to those with T-Cell counts of 500 or below (or the equivalent T-Cell percentages). At this level, the immune system has already deteriorated significantly and most AIDS researchers maintain that active anti-HIV treatment should be sought. (Note that such treatment is available on Guantanamo.)

At last report, there were 49 Haitians on Guantanamo who would be included in this category.

□ The Government litigators point out that if we provide entry based on medical factors such as this one, it could be construed as an admission that we cannot provide adequate care for such persons outside the U.S. and that such persons may have a right of entry. The litigators note that this could conceivably affect the government's arguments in the current case and in future litigation. On balance, however, they seem to feel that the litigation risk is manageable, especially if granting entry was portrayed as a humanitarian policy decision, and not as one taken as a matter of law.

Not surprisingly, the litigators believe our legal position would be strongest if we were to permit entry for all 187 of the Haitians prior to a District Court final order. This would avoid adverse findings of fact (i.e., about conditions on Guantanamo) from a hostile judge which could not be reversed on appeal, and would not imply Government admissions on any of the legal issues in the case.

B. Children of HIV-positive Haitians

There are now about 25 children on Guantanamo. The children have not been tested for HIV, but some probably have the virus. General policy has been to keep the children on Guantanamo if their parents are HIV-positive, so as to maintain family unification. Permitting entry for this entire group of children with their parents (who number about 15) would result in entry of about 40 Haitians.

C. Spouses of refugees already permitted entry into the United States

There are about 14 HIV-positive spouses of Haitians who have been permitted entry into the U.S. Some of those permitted entry came in for medical/humanitarian reasons. Others were HIV-negative and made the difficult decision to separate from their spouses and come to the U.S.

D. Other medical/humanitarian categories

Other categories include HIV-positive pregnant women in the early stages of pregnancy (4) and unaccompanied minors (2, though they are both 18 years of age).

IV. DISPOSITION OF HAITIANS WHO ARE PERMITTED ENTRY

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A resettlement task force made up of the Community Relations Service, the Immigration and Naturalization Service, the Department of Health and Human Services, and other agencies has facilitated the process of resettling most of those who have been granted entry thus far. The task force has worked with voluntary resettlement agencies and AIDS and Haitian-American support groups. These organizations take responsibility for settling Haitians (often with family members), and providing access to counselling, financial and medical assistance, etc.

The voluntary agencies have case-workers that provide such assistance for one year, and the support groups provide similar assistance. During the first three months after entry, CRS asks that voluntary agencies and support groups have intensive contact with the entrants, and the voluntary groups report to CRS on a continual basis.

If a decision were made to permit entry of some or all of the remainder of the Haitians, we could increase contact and communication between the voluntary organizations and the Haitians. CRS maintains that the current resettlement program includes "safe-sex" counselling, but we could review such counselling to ensure that it is systematic and comprehensive.

Special "Fascell-Stone" (Cuban-Haitian Entrant) legislation provides benefits to Haitians paroled into the United States for the purpose of seeking asylum. This includes costs of initial resettlement, as well SSI and Medicaid benefits. Though states participate in funding these programs, the effect of Fascell-Stone is to make the federal share of benefits larger than for other similarly situated entrants.

According to HHS estimates, the cost to states of the extraordinary medical care required by those who are now at Guantanamo would probably be about \$5 million over the lifetime of this population, assuming that all the Haitians were to fully access Medicaid and other public benefits. This is roughly equivalent to the cost of operating the camp at Guantanamo for 12-18 months. As you know, Section 404 of the Immigration and Nationality Act provides for an Immigration Emergency Fund that contains \$31.4 million and has never been accessed. This fund could be used to reimburse states if large numbers of Haitians were admitted.

V. ISSUES FOR DECISION

1. Should the Attorney General permit entry for one of the groups of Haitians described above? If so, which group?
2. Should any decision on entry await the final order of the District Court?
3. If a decision to permit entry is made, should the Attorney General be requested to make available monies from the Immigration Emergency Fund to reimburse states for the costs of medical care for the entrants?
4. Assuming that at least some Haitians will remain at

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Guantanamo for at least the time-being, should the NSC staff convene an interagency group to implement improvements in conditions at Guantanamo, as outlined in the recent NSC staff report on conditions at the camp?

CC: Records

(RECORDS)

Additional Header Information Follows

Date Created: 16-Apr-1993 14:32
Deletable Flag: Y
DOCNUM: 004702
VMS Filename: OA\$SHARE11:ZUQGKT3CS.WPL
Al Folder: APR93
Message Format:
Message Status: READ
Date Modified: 16-Apr-1993 14:32
Forward Flag: YES
Read-Receipt Requested: NO
Delivery-Receipt Requested: NO
Message Priority: FIRST_CLASS

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Withdrawal/Redaction Sheet

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. email	Robert Malley to Melanie Darby and Ardenia Hawkins, re: Draft Cuba Speech (6 pages)	09/28/1994	P1/b(1)
002. email	Robert Malley to Eric Schwartz, re: Cuba-announcements (4 pages)	10/06/1994	P1/b(1)
003. email	Robert Malley to Kathleen Cooper and Morton Halperin, re: Draft announcements (4 pages)	10/06/1994	P1/b(1)
004. email	James Baker to William Leary re: Lake Declaration (5 pages)	11/03/1994	P5 6393
005. email	Richard Wilhelm to Victor Rocha, re: [Meetings] (21 pages)	11/29/1994	P1/b(1)
006. email	Richard Wilhelm to Victor Rocha, re: [Meetings] (7 pages)	12/22/1994	P1/b(1)
007. email	Richard Wilhelm to Sandra Schmidt, re: [Memcons] (14 pages)	12/22/1994	P1/b(1)

COLLECTION:

Clinton Presidential Records
 NSC Emails
 MSMail - Record (Sept 94 - Sept 97) ([Immigration and Naturalization])
 OA/Box Number: 590000

FOLDER TITLE:

[09/28/1994 -12/29/1994]

2011-1044-F
 ke1372

RESTRICTION CODES

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

- P1 National Security Classified Information [(a)(1) of the PRA]
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MS Mail

DATE-TIME 03 November 94 10:57
FROM Baker, James E.
CLASSIFICATION UNCLASSIFIED
SUBJECT Lake Declaration [UNCLASSIFIED]
TO Leary, William H.
CARBON_COPY NO CC's on THIS MESSAGE
TEXT_BODY [[YANG.DOC : 2612 in YANG.DOC]]

Could you please give this a look over. Thanks.

ATTACHMENT
FILE DATE 3 November 94 10:44

ATTACHMENT
FILE NAME YANG.DOC

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

YANG YOU YI, et al.) CIVIL ACTION NO. 1:
) CV-93-1702
Petitioners)
)
v.)
)
JANET RENO, et al.,)
)
Respondents)

DECLARATION OF ANTHONY LAKE

I, Anthony Lake, do hereby state and declare as follows:

1. I currently serve the President as the Assistant to the President for National Security Affairs (APSNA). I have held this position since January 20, 1993.
2. I base this Declaration on my personal knowledge, information made available to me in the performance of my official duties and my knowledge of the issues under litigation in Yang v. Reno.
3. The Assistant to the President for National Security Affairs

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is one of several Assistants to the President in the White House. The APSNA is the President's national security adviser within the White House Office. In that capacity, I advise and assist the President in the execution of his national security responsibilities, including those relating to border security, immigration, and alien smuggling. I also ensure that the views of the heads of the national security agencies and departments are brought to the President's attention. In addition, one of my primary tasks is to administer the President's National Security Council (NSC) process to ensure that it functions properly and effectively.

4. In Presidential Decision Directive 2, President Clinton set forth the basic purpose and structure of how the National Security Council would operate during his administration. Among other things, President Clinton decided to make the APSNA a member of his National Security Council.

5. The National Security Act provides that the National Security Council shall have a staff, headed by a civilian Executive Secretary appointed by the President. In January 1993 President Clinton appointed Mr. William Itoh, an earlier declarant to the court, to this position. As Mr. Itoh has previously advised the court, the NSC staff are divided into functional and regional offices. Mr. Eric Schwartz and Mr. Rand Beers work in the Global Affairs office, which has responsibility for handling issues ranging from Haiti to terrorism to migration to human rights. On policy matters, Mr. Schwartz and Mr. Beers report to me through the Special Assistant to the President and Senior Director for Global Affairs, and one of two Deputy Assistants to the President for National Security Affairs. In other words, I or my Deputies, and usually all three of us, review all memoranda from NSC staff going to the President, and attend all meetings between NSC staff and the President.

6. I am aware that in response to a disagreement over the scope of discovery, in particular the scope of discovery to be permitted during depositions of Mr. Schwartz and Mr. Grover Joseph Rees, former General Counsel of the Immigration and Naturalization Service, the Government was ordered by the court to file a motion for a protective order as to those privileges, if any, the Government would assert in the context of these depositions. The Government did so on July 25, 1994. At the time, however, it was not possible

to assert privileges with respect to particular information in the absence of a specific question requiring the disclosure of specific information.

7. I have reviewed Judge Rambo's Memorandum and Order of October 17 in which the court found Mr. Itoh's earlier declaration deficient in two respects. First, while noting that the NSC is not an agency or department, and therefore there is no head of agency to assert privilege, the court did not believe the Executive Secretary to have "the kind of political and policy making authority" required to assert privilege. Second, the court found that the Executive

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Secretary had not personally considered the material for which privilege was sought and failed therefore to make an explicit representation to that effect. The court indicated in its Order that if the Government failed to re-assert the State Secrets and/or deliberative process privileges within twenty days those privileges would be deemed waived.

8. As a member of the President's National Security Council and as the APSNA I reviewed the recommendations of the Border Security Working Group and related information going to and from the President. I also attended some, but not all of the senior level meetings, including those with the President, on BSWG subjects. Nonetheless, I am not now in a position to assert privileges over information that may be disclosed in response to questions that may be asked of Mr. Schwartz or Mr. Rees, or any other deponents. Nor am I in a position to advise the court whether the Government would waive these privileges where they are applicable. Plaintiffs' allegations are serious, and while I believe them unfounded, some degree of discovery is appropriate. Further, some information discussed in the context of the BSWG and subsequent meetings with the President would not be privileged. Alien smuggling and border security are not subjects, like military operations or intelligence, where one might reach a presumption that questions of State Secrets will regularly arise.

10. For these reasons, it is not my intention to assert, or even to suggest, a blanket privilege with respect to the function and content of meetings of the Border Security Working Group as they pertain to the Golden Venture hearings. However, matters of privilege may arise, particularly if questioning runs afield of the issue at hand: whether the government adopted any policy or its officials issued any instructions or directions intended to limit the independence of the adjudicatory officials in their disposition or adjudication of the administrative exclusion and asylum proceedings pertaining to the Golden Venture passengers detained in York County. What information may be at stake?

11. As Mr. Itoh has previously advised, the purpose of the Border Security Working Group was to advise the President, through the Assistant to the President for National Security Affairs and the Assistant to the President for Domestic Policy on border security generally and specifically on the smuggling of illegal aliens, terrorism, and their links with organized criminal activity. The BSWG regularly considered classified and law enforcement sensitive information when deliberating on possible and actual measures to disrupt the criminal networks that engage in the traffic of illegal aliens. In addition, the BSWG was tasked with reviewing the implications of the World Trade Center bombing and making corresponding policy recommendations. These discussions occurred prior to, during, and after the Golden Venture discussions.

12. More specifically, at a meeting with the President on June 11, 1993, my Deputy and representatives of the BSWG, briefed the President on, among other things, overseas intelligence activities

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to address alien smuggling. Virtually any substantive answer to questions posed to deponents on this topic could cause damage to the national security and potentially jeopardize sources and methods of intelligence gathering. Substantive questions in this area would require assertion of the State Secrets privilege. In addition, the papers I received that were generated by the BSWG reflect

deliberations on U.S. approaches to third countries to address the flow of illegal migrants. Revelation of the content, and in some cases even the existence, of confidential diplomatic communications with third countries by the Government could make it more difficult to facilitate international cooperation in this area in the future.

13. With respect to deliberative process, like Mr. Itoh, I am not in a position to categorically assert that all questions pertaining to the work and deliberations of the Border Security Working Group would require the disclosure of privileged information in response. Many of the issues discussed by the BSWG, such as legislation for expedited exclusion proceedings, have already been identified. Nonetheless, I agree entirely with Mr. Itoh's statement that "the capacity of the interagency process to advise and assist the President depends on the willingness of the President's advisers and lawyers to speak freely at each stage of policy deliberations with confidence that their recommendations and statements will not become public and compared to the outcome of Presidential decisions or used to undermine policy determinations. The confidentiality of these communications is fundamental to the President's decisionmaking process, be it through the NSC process, the DPC process, or a hybrid."

14. As the Assistant to the President responsible for administering the NSC process and ensuring that the views of the national security departments and agencies are presented to the President, discussion of specific comments made by specific persons where policy options are discussed could undermine the NSC process. Participants like to be on the "winning" policy side and do not want to be perceived as opposing the President's policies. Were discovery permitted of particular viewpoints prior to key policy decisions, it is my judgment that agencies would be more likely to hedge their advice to the President, or present it with an eye toward public disclosure. This could dilute the clarity and value of the advice that the President must rely on in making national security decisions. By further, and hypothetical, example, revelation that the President or the Attorney General had been skeptical about the merits of a particular argument or option could embolden would be alien smugglers to test the Government's legal and policy resolve to resist alien smuggling.

15. For these reasons, it is my intention to assure the court that the Government does not intend to waive any applicable privileges in advance of depositions to be taken from participants in the BSWG deliberations. Whether the Government will assert or

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waive a particular privilege must be decided in the context of particular questions requiring particular answers. However, where the interests and concerns I have identified above are implicated, I expect the Government to assert the proper privilege before deponents answer questions.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Date Anthony Lake
Assistant to the President
for National Security Affairs

1. Should we assert in declaration that Itoh has authority to make these decisions?
I think not, let lawyers assert
as a legal point.

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001. email	Eric Schwartz to Timothy Atkin, et al., re: Revised Version As Of 12:30 PM (5 pages)	05/19/1995	P1/b(1)
002. email	Eric Schwartz to Peter Bass, et al., re: [Phone Call] (9 pages)	05/22/1995	P1/b(1)
003. email	Robert Malley to Morton Halperin re: POTUS letter to Ferro (3 pages)	05/17/1995	P5 6394
004. email	Wendy Gray to MacArthur DeShazer, re: [arrest] (3 pages)	08/01/1995	P1/b(1)
005. email	Eric Schwartz to James Eisenhower, re: Coast Guard/State meeting (2 pages)	10/23/1995	P1/b(1)
006. email	Robert Malley to Morton Halperin, re: [PDD] (7 pages)	10/27/1995	P1/b(1)
007. email	Robert Malley to Eric Schwartz, re: [PDD] (7 pages)	10/27/1995	P1/b(1)
008. email	Matthew Lorin to Eric Schwartz, re: [PDD] (7 pages)	10/27/1995	P1/b(1)
009. email	Alan Kreczko to Morton Halperin, et al., re: [deportation case] (7 pages)	12/13/1995	P1/b(1), P5
010. email	Alan Kreczko to Elizabeth Verville, re: [deportation case] (10 pages)	12/15/1995	P1/b(1), P5

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 MS Mail - Record (Sept 94 - Sept 97) ([Immigration and Naturalization])
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[05/02/1995 - 12/15/1995]

2011-1044-F

ke1374

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6394

M S M a i l

DATE-TIME 17 May 95 18:58
FROM Malley, Robert
CLASSIFICATION UNCLASSIFIED
SUBJECT POTUS letter to Ferro [UNCLASSIFIED]
TO Halperin, Morton H.
CARBON_COPY Cooper, Kathleen H.
TEXT_BODY
Attached is a reply to a letter Simon Ferro sent the POTUS and to which we were asked to respond.
[[FERRO.DOC : 4664 in FERRO.DOC]]
ATTACHMENT
FILE DATE 17 May 95 18:57
ATTACHMENT
FILE NAME FERRO.DOC

Dear Simon:

Thank you for your letter on U.S. policy towards Cuban migrants. As usual, I found your thoughts most helpful in dealing with this difficult issue.

Let me begin by saying that I respect your views on our recent decision. I share your assessment of the Cuban regime and its failure to take any significant steps towards democratization or respect for human rights. In that context, returning Cuban migrants, even those attempting to enter the U.S. illegally, is not a decision I took lightly. At the same time, I am firmly convinced that it was in the United States national interests: It offered the only viable humanitarian solution to the situation at Guantanamo; it will discourage future uncontrolled migration from Cuba while maintaining vast opportunities for legal migration; and it will

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promote our common goal of achieving a peaceful transition to democracy in Cuba.

One of our long-standing objectives has been to regularize migration relations with Cuba. This is important not only to guarantee the integrity of our national borders, but also to ensure that Cubans do not take to the sea in unseaworthy rafts at great peril to their lives. My decision that Cuban migrants intercepted at sea would be taken to Guantanamo and the subsequent agreement we reached with the Cuban government on September 9, 1994, were a first step in that direction.

As you know, however, the situation at Guantanamo posed serious humanitarian, safety, and financial difficulties. The potential for violent unrest combined with the cost of administering the safehaven and the personal toll indefinite presence in the camp was taking on the Cuban migrants required us to take action. My Administration's challenge was to resolve these problems without encouraging a new uncontrolled outflow from Cuba.

Last October, you suggested to me that we allow migrants at Guantanamo into the United States. While I agree that was the preferable, humane solution, standing alone it might well have triggered another massive outflow of Cubans, endangering their lives and defying our ability to control our borders. Because the United States cannot admit all Cubans who seek to come here, and because we know that Guantanamo should not be used as an indefinite safehaven, I concluded that the only way to forestall a massive and dangerous exodus was to signal our determination to put an end to illegal migration from Cuba while at the same time maintaining expanded opportunities for legal admission. This course of action required that the United States build on the September 1994 agreement to further regularize U.S.-Cuban migration relations. The May 2 agreement meets these objectives.

Of course, as you point out, we have a moral obligation to protect genuine refugees. We will. The cases of migrants claiming a need for protection will be examined by specially trained officials from the Immigration and Naturalization Service. We will not take back

migrants who cannot safely be returned to Cuba. Other procedures announced by the Attorney General on May 2 will permit United States officials to monitor the treatment of Cubans who return to Cuba and help them take advantage of our opportunities for legal admission. This includes our expanded in-country refugee program -- Cuba being one of only three countries in which the United States operates such a program. Ultimately, the steps we have taken address the humanitarian problem at Guantanamo, deter illegal migration, protect political refugees, and enable at least 20,000 Cubans to enter the United States legally every year. I firmly believe it will serve

COPY

our national interests well.

It also is my view that these steps will promote our broader policy goals. The regularization of our migration relationship will allow the United States to turn to its fundamental objective in Cuba: A peaceful transition to democracy, respect for human rights of the Cuban people, and an open economy with opportunity for all. The agreement deprives the Castro regime of the ability to use migration as a means of pressure on the United States. By providing for the monitoring by U.S. officials of the treatment of returned migrants, the agreement also offers us unprecedented access to investigate the human rights situation in Cuba.

Let me say a few words about the issue of consultation which you raise in your letter. As you know, I have always valued the advice and support you and others in South Florida have generously offered me over the years. In this specific instance, however, public disclosure represented an extremely serious risk. Rumors were likely to trigger a massive exodus of rafters trying to anticipate any new Cuban-U.S. migration agreement. The ensuing panic might well have resulted in loss of life, both at Guantanamo and on the high seas. But you can rest assured that I will continue to rely on your guidance in the future.

Thank you once again for your comments. I look forward to further discussions with you on this and other matters.

Sincerely,

Simon Ferro
6161 Blue Lagoon Drive
Suite 250
Miami, Florida 33126

COPY

Withdrawal/Redaction Sheet

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION	
001. email	Robert Malley to Kelly Letts re: Package (3 pages)	06/07/1996	P5	6395
002. email	Robert Malley to James Baker et al re: FGM (3 pages)	06/10/1996	P5	6396
003. email	Robert Malley to Kelly Letts re: Package (3 pages)	06/11/1996	P5	6397
004. email	Eric Schwartz to Robert Malley re: FGM (3 pages)	06/14/1996	P5	6398
005. email	Robert Malley to Kelly Letts re: FGM (4 pages)	06/17/1996	P5	6399
006. email	Robert Malley to Eric Schwartz, re: [PDD] (10 pages)	07/17/1996	P1/b(1)	
007. email	Robert Malley to Kelly Letts, re: package (3 pages)	07/25/1996	P1/b(1)	
008. email	Robert Malley to Kelly Letts, re: package (3 pages)	07/24/1996	P1/b(1)	
009. email	Robert Malley to Kelly Letts, re: package (5 pages)	08/01/1996	P1/b(1)	
010. email	Peter Boynton to Robert Malley (8 pages)	08/05/1996	P5	6400
011. email	Robert Malley to Kelly Letts re: Golden Venture (8 pages)	08/05/1996	P5	6401
012. email	M. K. Friedrich to Kelly Letts re: Package 5421 (5 pages)	08/09/1996	P5	6402
013. email	Joesph Sestak to Robert Malley re: Golden Venture (7 pages)	08/10/1996	P5	6403

COLLECTION:

Clinton Presidential Records
 NSC Emails
 MSMail - Record (Sept 94 - Sept 97) ([Immigration and Naturalization])
 OA/Box Number: 590000

FOLDER TITLE:

[06/04/1996 - 12/18/1996]

2011-1044-F

ke1376

RESTRICTION CODES

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

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

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

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

RR. Document will be reviewed upon request.

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

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

Withdrawal/Redaction Sheet

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
014. email	Robert Malley to Kelly Letts re: Package (3 pages)	09/11/1996	P5 6404
015. email	Peter Bass to Kristen Cicio and Katherine Veit re: Golden Venture (10 pages)	12/11/1996	P5 6405

COLLECTION:

Clinton Presidential Records
 NSC Emails
 MSMail - Record (Sept 94 - Sept 97) ([Immigration and Naturalization])
 OA/Box Number: 590000

FOLDER TITLE:

[06/04/1996 - 12/18/1996]

2011-1044-F
 ke1376

RESTRICTION CODES

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

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

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

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

RR. Document will be reviewed upon request.

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

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

MS Mail

DATE-TIME 07 June 96 11:11
FROM Malley, Robert
CLASSIFICATION UNCLASSIFIED
SUBJECT Package [UNCLASSIFIED]
TO Letts, Kelly J.
CARBON_COPY NO CC's on THIS MESSAGE
TEXT_BODY

I will provide attachment. (If Eric doesn't get to clear by today, please move anyway!!)

[[FGM2.DOC : 2818 in FGM2.DOC]][[FGM3.DOC : 2819 in FGM3.DOC]]

ATTACHMENT
FILE DATE 7 June 96 11:6

ATTACHMENT
FILE NAME FGM2.DOC

cc: Vice President
Chief of Staff

INFORMATION

MEMORANDUM FOR THE PRESIDENT

FROM: ANTHONY LAKE

SUBJECT: Asylum and Female Genital Mutilation

Background

You asked about the status of Fauziya Kasinga, a young woman from Togo who fled her country and has applied for asylum in the United

COPY

States claiming that she would face female genital mutilation (FGM) if returned.

Her claim was denied by an immigration judge who found both that Ms. Kasinga was not credible and that FGM did not constitute a basis for asylum. She has appealed her case to the Board of Immigration Appeals (BIA). A decision is pending.

Administration Position

The Immigration and Naturalization Service (INS) has now taken the position that FGM can constitute a basis for asylum. Because of remaining doubts about the credibility of Ms. Kasinga's account, the INS has not dropped the case (as urged by A.M. Rosenthal in article at Tab A). Rather, the INS has requested that the case be remanded to the immigration judge to reconsider her credibility in light of the fact that FGM can be grounds for asylum.

Future Course of Action

If the BIA agrees with our analysis, FGM will be considered a ground for asylum (though Ms. Kasinga might not benefit from the decision if she once again is found not to be credible).

If the BIA disagrees, INS will certify the case to the Attorney General who has the authority to overrule the decision. At that point, the Administration also could consider issuing regulations providing that FGM shall be grounds for asylum.

Attachment

Tab A A.M. Rosenthal Article

ATTACHMENT
FILE DATE

7 June 96 11:10

ATTACHMENT
FILE NAME

FGM3.DOC

COPY

June 7, 1996

ACTION

MEMORANDUM FOR ANTHONY LAKE
SANDY BERGER

THROUGH: ERIC SCHWARTZ/ALAN KRECZKO

FROM: ROB MALLEY

SUBJECT: Asylum and Female Genital Mutilation

In response to an article by A.M. Rosenthal, the President asked why female genital mutilation should not be considered a ground for asylum.

RECOMMENDATION

That you sign the attached memorandum to the President.

Attachments

Tab I Memorandum to the President

Tab A A.M. Rosenthal Article

COPY

MS Mail

DATE-TIME 10 June 96 17:34
FROM Malley, Robert
CLASSIFICATION UNCLASSIFIED
SUBJECT FGM [UNCLASSIFIED]
TO Baker, James E.
Hunerwadel, Joan S.
Kreczko, Alan J.
Sparks, John E.
CARBON_COPY NO CC's on THIS MESSAGE

TEXT_BODY

Alan, John:

Attached is document as rewritten. Let me know if you think we need to provide the POTUS with more details about what the INS current position is, and what the AG regulation might be. Thanks

[[FGM2.DOC : 4400 in FGM2.DOC]]

ATTACHMENT
FILE DATE

10 June 96 17:34

ATTACHMENT
FILE NAME

FGM2.DOC

cc: Vice President
Chief of Staff

INFORMATION

MEMORANDUM FOR THE PRESIDENT

FROM: ANTHONY LAKE

SUBJECT: Asylum and Female Genital Mutilation

COPY

Background

You asked about the status of Fauziya Kasinga, a young woman from Togo who fled her country and has applied for asylum in the United States claiming that she would face female genital mutilation (FGM) if returned. Her claim was denied by an immigration judge who found both that Ms. Kasinga was not credible and that FGM did not constitute a basis for asylum. She has appealed her case to the Board of Immigration Appeals (BIA). A decision is pending.

INS Position

The Immigration and Naturalization Service (INS) has now taken the position that FGM can constitute a basis for asylum in the case of young women belonging to a tribe and who have not been circumcised in accordance with that tribe's custom. Because of remaining doubts about the credibility of Ms. Kasinga's account, the INS has not dropped the case (as urged in article at Tab A). Rather, the INS has asked that the case be remanded to the immigration judge to reassess her credibility given that FGM can be grounds for asylum.

Future Course of Action

If the BIA agrees with INS's analysis, FGM will be considered a ground for asylum under the conditions specified by INS (though Ms. Kasinga might not benefit from the decision if she once again is found not to be credible).

If the BIA disagrees, INS will certify the case to the Attorney General who has the authority to overrule the decision.

Regardless of the BIA's decision, the Attorney General could issue regulations providing that FGM shall be grounds for asylum. The standards in the regulation could be more generous than those currently advocated by the INS and provide that any person who has been forced to undergo FGM or who has been persecuted for failure to

COPY

undergo such a procedure shall be found to have a credible fear
of
persecution for asylum purposes.

Attachment
Tab A A.M. Rosenthal Article

COPY

M S M a i l

DATE-TIME 11 June 96 15:59
FROM Malley, Robert
CLASSIFICATION UNCLASSIFIED
SUBJECT package [UNCLASSIFIED]
TO Letts, Kelly J.
CARBON_COPY NO CC's on THIS MESSAGE
TEXT_BODY I've revised this memo. It has been seen by Eric and Alan.

[[FGM2.DOC : 4103 in FGM2.DOC]]

ATTACHMENT
FILE DATE 11 June 96 15:58

ATTACHMENT
FILE NAME FGM2.DOC

cc: Vice President
Chief of Staff

INFORMATION

MEMORANDUM FOR THE PRESIDENT

FROM: ANTHONY LAKE

SUBJECT: Asylum and Female Genital Mutilation

Background

You asked about the status of Fauziya Kasinga, a young woman from Togo who fled her country and has applied for asylum in the

COPY

United States claiming that she would face female genital mutilation (FGM) if returned. Her claim was denied by an immigration judge who found both that Ms. Kasinga was not credible and that FGM did not constitute a basis for asylum. She has appealed her case to the Board of Immigration Appeals (BIA). A decision is pending.

INS Position

The Immigration and Naturalization Service (INS) has now taken the position that FGM can constitute a basis for asylum in the case of young women belonging to a tribe and who have not been circumcised in accordance with that tribe's custom. The INS has not dropped the case, as urged in article at Tab A, for two reasons: (1) There are remaining doubts about the credibility of Ms. Kasinga's account; and (2) once a case is in the court system, INS's customary practice is to allow it to follow its course. Instead, the INS has asked that the case be remanded to the immigration judge to reassess her credibility, taking into account that FGM can be grounds for asylum.

Future Course of Action

If the BIA agrees with INS's analysis, FGM will be considered a ground for asylum under the conditions specified by INS (though Ms. Kasinga might not benefit from the decision if she once again is found not to be credible).

If the BIA disagrees, INS will certify the case to the Attorney General who has the authority to overrule the decision.

Regardless of the BIA's decision, the Attorney General could issue regulations providing that FGM shall be grounds for asylum. The standards in the regulation could be more generous than those currently advocated by the INS and provide that any person who has been forced to undergo FGM or who has been persecuted for failure to

COPY

undergo such a procedure shall be found to have a credible fear of persecution for asylum purposes. Once the BIA has issued its decision, we will consult with the Justice Department and present you with a recommendation on whether such regulations ought to be issued.

Attachment
Tab A A.M. Rosenthal Article

COPY

6398

MS Mail

DATE-TIME 14 June 96 19:40
FROM Schwartz, Eric P.
CLASSIFICATION UNCLASSIFIED
SUBJECT FW: FGM [UNCLASSIFIED]
TO Malley, Robert
CARBON_COPY NO CC's on THIS MESSAGE
TEXT_BODY

OK with me. get Kreczko's ok. then let me read in final draft hard copy.

tanks.

From: Malley, Robert
To: Kreczko, Alan J.; Schwartz, Eric P.
CC: /R, Record at A1
Subject: FGM [UNCLASSIFIED]
Date: Friday, June 14, 1996 06:58 PM

[[3982PRES.DOC : 4896 in 3982PRES.DOC]]

For you concurrence (would like to send this up first thing monday).

ATTACHMENT
FILE DATE 14 June 96 18:57

ATTACHMENT
FILE NAME 3982PRES.DOC
3982
cc: Vice President
Chief of Staff

INFORMATION

MEMORANDUM FOR THE PRESIDENT

FROM: ANTHONY LAKE

COPY

SUBJECT: Asylum and Female Genital Mutilation

Background

You asked about the status of Fauziya Kasinga, a young woman from Togo who fled her country and has applied for asylum in the United States claiming that she would face female genital mutilation (FGM) if returned. Her claim was denied by an immigration judge who found both that Ms. Kasinga was not credible and that FGM did not constitute a basis for asylum. She has appealed her case to the Board of Immigration Appeals (BIA). On June 14, the BIA granted her asylum.

INS Position

Before the BIA, the Immigration and Naturalization Service (INS) took the position that FGM can constitute a basis for asylum in the case of young women belonging to a tribe and who have not been circumcised in accordance with that tribe's custom. The INS did not drop the case, as urged in article at Tab A, for two reasons: (1) It had remaining doubts about Ms. Kasinga's credibility; and (2) once a case is in the court system, INS's customary practice is to allow it to follow its course. Instead, the INS has asked that the case be remanded to the immigration judge to reassess her credibility, taking into account that FGM can be grounds for asylum.

The INS also asked the BIA to endorse its overall framework limiting the availability of FGM as a ground for asylum. Specifically, it urged that (i) only FGM that "shocks the conscience" should be considered persecution; (ii) FGM not be considered a ground for asylum if the person had been subjected to it in the past; (iii) women not be eligible for asylum if they consented to FGM.

BIA Ruling

COPY

The BIA ruled for Ms. Kasinga, finding that (i) she was credible; (ii) FGM constitutes persecution; and (iii) Ms. Kasinga had established a well-founded fear of persecution on account of her membership in the group composed of "young women of the tribe who have not been, and do not wish to be, subjected to FGM." The BIA refused to endorse the INS' overall framework, choosing instead to rule strictly on the facts presented in the case.

The Administration welcomed the ruling and the INS will not appeal the case.

Future Course of Action

As a result of the BIA decision, FGM will be considered a basis for asylum, though the BIA's ruling did not establish clear guidelines to be applied in factual circumstances different from this case.

The Attorney General could now issue regulations specifying the conditions under which FGM shall be grounds for asylum. These could be narrow -- as urged by the INS -- or more broad. For example, they could provide that any person who has been forced to undergo FGM or who has been persecuted for failure to undergo such a procedure shall be found to have a credible fear of persecution for asylum purposes.

We will be consulting with the Justice Department and present you with a recommendation on whether such regulations ought to be issued.

Attachment
Tab A A.M. Rosenthal Article

COPY

MS Mail

DATE-TIME 17 June 96 09:21
FROM Malley, Robert
CLASSIFICATION UNCLASSIFIED
SUBJECT FGM [UNCLASSIFIED]
TO Letts, Kelly J.
CARBON_COPY NO CC's on THIS MESSAGE

TEXT_BODY

Here it is

[[3982LAKE.DOC : 2376 in 3982LAKE.DOC]][[3982PRES.DOC : 2377 in
3982PRES.DOC]]

ATTACHMENT
FILE DATE

17 June 96 9:20

ATTACHMENT
FILE NAME3982LAKE.DOC
3982redo

June 7, 1996

ACTION

MEMORANDUM FOR ANTHONY LAKE
SANDY BERGER

THROUGH: ERIC SCHWARTZ/ALAN KRECZKO

FROM: ROB MALLEY

SUBJECT: Asylum and Female Genital Mutilation

In response to an article by A.M. Rosenthal, the President asked
why
female genital mutilation should not be considered a ground for
asylum.

RECOMMENDATION

COPY

That you sign the attached memorandum to the President at Tab I.

Attachments

Tab I Memorandum to the President

Tab A A.M. Rosenthal Article

ATTACHMENT
FILE DATE

17 June 96 9:20

ATTACHMENT
FILE NAME

3982PRES.DOC

3982

cc: Vice President

Chief of Staff

INFORMATION

MEMORANDUM FOR THE PRESIDENT

FROM: ANTHONY LAKE

SUBJECT: Asylum and Female Genital Mutilation

Background

You asked about the status of Fauziya Kasinga, a young woman from Togo who fled her country and has applied for asylum in the United States claiming that she would face female genital mutilation (FGM) if returned. Her claim was denied by an immigration judge who found both that Ms. Kasinga was not credible and that FGM did not constitute a basis for asylum. She has appealed her case to the Board of Immigration Appeals (BIA). On June 14, the BIA granted her asylum.

INS Position

COPY

Before the BIA, the Immigration and Naturalization Service (INS) took the position that FGM can constitute a basis for asylum in the case of young women belonging to a tribe and who have not been circumcised in accordance with that tribe's custom. The INS did not drop the case, as urged in article at Tab A, for two reasons: (1) It had remaining doubts about Ms. Kasinga's credibility; and (2) once a case is in the court system, INS's customary practice is to allow it to follow its course. Instead, the INS has asked that the case be remanded to the immigration judge to reassess her credibility, taking into account that FGM can be grounds for asylum.

The INS also asked the BIA to endorse its overall framework limiting the availability of FGM as a ground for asylum. Specifically, it urged that (i) only FGM that "shocks the conscience" should be considered persecution; (ii) FGM not be considered a ground for asylum if the person had been subjected to it in the past; (iii) women not be eligible for asylum if they consented to FGM.

BIA Ruling

The BIA ruled for Ms. Kasinga, finding that (i) she was credible; (ii) FGM constitutes persecution; and (iii) Ms. Kasinga had established a well-founded fear of persecution on account of her membership in the group composed of "young women of the tribe who have not been, and do not wish to be, subjected to FGM." The BIA refused to endorse the INS' overall framework, choosing instead to rule strictly on the facts presented in the case.

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As a result of the BIA decision, FGM will be considered a basis for asylum, though the BIA's ruling did not establish clear

COPY

guidelines to
be applied in factual circumstances different from this case.

The Attorney General could now issue regulations specifying the conditions under which FGM shall be grounds for asylum. These could be narrow -- as urged by the INS -- or more broad. For example, they could provide that any person who has been forced to undergo FGM or who has been persecuted for failure to undergo such a procedure shall be found to have a credible fear of persecution for asylum purposes. We will be consulting with the Justice Department and present you with a recommendation on whether such regulations ought to be issued.

Attachment
Tab A A.M. Rosenthal Article

COPY

M S M a i l

DATE-TIME 05 August 96 15:56
FROM Boynton, Peter J.
CLASSIFICATION UNCLASSIFIED
SUBJECT FW: Golden Venture [UNCLASSIFIED]
TO Malley, Robert
CARBON_COPY NO CC's on THIS MESSAGE
TEXT_BODY

Rob; i've made a few minor suggestions, and asked a couple questions in the text of your memo.

I agree with your assessment that the military base and halfway house options aren't attractive, for the reasons you outline in your memo. That leaves us with supervised release or removal to 3rd country, if we are compelled to do more than we are doing now.

As I understand it, the law mandates detention except in the circumstance where parole is strictly in the public interest. If we can't have reasonable assurance that supervised release won't result in alien flight, then how can we say that would be strictly in the public interest? I saw your comments re DOJ/INS view that the law enforcement benefit has already been derived from the detention to date - but I don't understand how they can draw that conclusion (please see my comment in the text of your memo). It seems to me that supervised release resulting in alien flight will erode the deterrent effect. If that is true, how can that be in the public interest?

If we must do something, couldn't we pursue removals to third countries while they remain in detention? (see my question re your assessment of this option in the text)

With respect to issue#2, it seems to me that it will be difficult and somewhat artificial to try and draw a line between those detained in York County and elsewhere; and similarly for those with a pending legal appeal the right to change their minds anytime prior to deportation makes it difficult to draw a distinction. If we can't make the distinction stick, then what's good for one group should serve the whole group for whichever option is chosen.

tk

From: Malley, Robert
To: Boynton, Peter J.; Danvers, William C.; Kreczko, Alan J.; Schwartz, Eric

COPY

P.; Sestak, Joseph A.

CC: /R, Record at A1; @LEGISLAT-Legislative Affairs; @LEGAL - Legal Advisor

Subject: Golden Venture [UNCLASSIFIED]

Date: Friday, August 02, 1996 04:53 PM

[[GOLDEN.DOC : 3873 in GOLDEN.DOC]]

Attached is a draft memo to the POTUS re. the Golden Venture detainees. As you will see, there is no recommendation yet.

My own personal view (though I am more than open to persuasion) is that we should release all the detainees (barring some unknown circumstances -- i.e., danger to the community) and place them with relatives or other responsible persons. We would not abandon efforts to deport them, and we would pursue at the same time third country resettlement options.

The reason I am leaning toward this option is that if we want to do something (and the POTUS certainly has suggested he does), then this is the only option that appears to make sense. Moving them to a military base or some other facility would barely improve their lot, and in fact would require moving them from York County where they enjoy a broad support network. As for extending the decision to all detainees (and not only those at York), I would be fearful of a legal challenge to a distinction for which I see no basis. Finally, we could limit the decision to those whose habeas petitions are still pending, but if we are willing to release 50, why not extend to the 20 others who in any event probably would change their minds and chose to resist deportation if they saw that we were changing their status.

Anyway, take a look and provide me with comments. Please get back to me by tuesday, as Sandy has asked me for this repeatedly

Thanks

ATTACHMENT
FILE DATE

5 August 96 14:50

ATTACHMENT
FILE NAME

GOLDEN.DOC

cc: Vice President
Chief of Staff

COPY

ACTION

MEMORANDUM FOR THE PRESIDENT

FROM: ANTHONY LAKE
JACK QUINN
CAROL RASCO
JOHN HILLEY

SUBJECT: Golden Venture Detainees

Purpose

To review current Administration policy concerning the detention of Chinese nationals from the Golden Venture.

Background

In a recent conversation with Representative Goodling, you suggested that you would review options to address the continued detention of 47 Chinese nationals in York County, Pennsylvania.

The Golden Venture

The 47 detainees in York County were among some 282 Chinese nationals who tried to enter the United States illegally in 1993 aboard the Golden Venture. The Golden Venture symbolized increased efforts of Chinese alien smugglers; Chinese nationals who were on the ship pledged as much as \$30,000 each to alien smugglers for passage. The aliens were placed in exclusion or deportation proceedings and many have raised asylum claims, in particular based on China's coercive family planning practices.

Legal background

Under current law, coercive family practices generally are not grounds for asylum. However, pursuant to an administrative regime you approved in 1994, release from detention and protection from deportation may be provided asylum-seekers who have suffered severe mistreatment related to coercive family planning practices or who have well-founded fears of return to severe mistreatment. The

COPY

Administration has indicated support for legislation currently before the Congress that would provide statute-based protection to those who are now afforded administrative relief. (However, the provisions are included in the immigration bill and other legislative proposals the Administration otherwise does not support.)

Status of Golden Venture migrants

To date, one hundred and three Golden Venture migrants have been deported to China. Thirty-four were granted asylum and have been released. Eleven have been resettled in third countries. Eight were granted humanitarian relief from deportation based on the administrative procedures described above. Forty-four were released on bond or (in the case of juveniles) placed in foster homes. (In addition, six drowned while attempting to reach our shores and six escaped custody.)

Therefore, a total of seventy Golden Venture migrants remain in detention; of these, twenty have abandoned their legal appeals and are awaiting deportation while fifty have pending habeas corpus petitions in federal court. Final resolution of their cases is not expected until the end of the year at the earliest.

The geographic breakdown is as follows: Forty-seven are at York County, of whom eleven have given up their appeals and thirty-six have pending habeas petitions. Seventeen are at Bakersfield (CA)

--
eight have given up their appeals and nine have pending petitions.

The rest are in New Orleans and Winchester (VA).

INS detention policy

While U.S. law mandates the detention of persons who have attempted to enter our country without permission, the Immigration and Naturalization Service (INS) is authorized to parole such persons where it would be "strictly in the public interest." However, in order to deter future alien smuggling, the Administration strictly applied its detention policy to the Chinese migrants. DOJ, INS

COPY

and the Coast Guard believe this detention policy has effectively discouraged alien smuggling from China.

Appeals from Congress and other groups

Twenty eight Representatives have written to urge the immediate release of the Golden Venture detainees. They include Representatives Goodling, Gilman, Hyde, Smith, Berman, and Pelosi.

Numerous advocacy groups have made the same request.

ISSUE #1: POSSIBLE COURSES OF ACTION

Option 1. Stay the course: maintain current detention.

DOJ, INS and the Coast Guard strongly recommend that we maintain the 70 aliens in detention pending resolution of their cases. They stress that all detainees have been determined not to be eligible for asylum and not to qualify for administrative relief. They also argue that our strict detention policy has succeeded in deterring this form of alien smuggling, important because detection of these vessels making open-ocean crossings is by no means assured, and when they are, interdiction is particularly expensive. Finally, any modification in status could convince detainees who have given up their legal appeals and are awaiting deportation to change their minds, which they can do until actual deportation.

Option 2. Soft Detention on a Military Base

The INS has placed detainees in "soft custody" on military bases in some circumstances, for example when minors at risk of harm have had to be detained. Military bases can be less expensive than private contracting facilities and provide more security. DoD recommends against this option, pointing to prior instances of violence caused by migrants detained on military bases (e.g., the experience of the Mariel Cubans). To address these issues, the aliens could be moved to a base that is in the process of closing and presently unoccupied. However, it is unclear whether moving the detainees to a military

COPY

base would improve their lot given the broad support network they enjoy at York County, including legal assistance and English language classes.

Option 3. Soft Detention in Halfway Houses

Halfway houses have been used to hold aliens on prior occasions; they generally are run by non-governmental organizations or public contractors who are responsible for the education and medical care of the residents. DOJ and INS recommend against this option because of the high risk that the aliens might flee.

Option 4. Supervised Release

The INS has the ability to parole the detainees and seek to place them with relatives or other responsible persons. Detainees would be required to report regularly to a volunteer organization or public interest group and be subjected to a curfew. While this option would be applauded by advocacy groups and some on the Hill, DOJ and INS strongly oppose it, arguing that it is likely to result in the flight of a number of aliens and that release would undermine the legal position the government has taken since the outset of this case. Moreover, given the likelihood that the government ultimately will prevail in the habeas cases, they believe that trying to remove the migrants after they have been released would create a more visible and controversial issue. On the other hand, DOJ and INS recognize that releasing the detainees would not have a significant impact on our law enforcement objectives since much of the desired deterrent effect has been achieved by the long period of detention [Rob; I'm surprised to hear that DOJ and INS feel this way - could it not also be interpreted (by the smugglers/aliens) as a signal that the administration has changed policy, or if not changed, then can't sustain it's policy (eg detain long enough) and therefore encourage

COPY

resumption of smuggling?.

Option 6: Removal to Third Countries [Rob, where's #5?]

An attorney representing some of the detainees has resettled ten of

them as refugees in Ecuador and he is willing to continue his efforts. The U.S. also could d, marché countries of the region.

While

this option would meet both humanitarian and law enforcement objectives, prior experience suggests it will be difficult to find

interested third countries, particularly within an acceptable timeframe [Rob, wasn't this prior experience with respect to large

numbers of refugees? If so, would it hold true for a comparatively

small number?]. This option could be pursued in conjunction with a

decision to transfer or release the detainees.

ISSUE #2: DETAINEES AFFECTED BY DECISION

Any option other than maintaining the status quo will require deciding who among the Golden Venture detainees should benefit from

the change in status. There are two questions:

1: Whether the decision should affect all Golden Venture detainees or only those in York County

The York County detainees are the only ones you discussed with Representative Goodling. However, it would be difficult to distinguish between these and other detainees, and some persons could choose to challenge such a distinction in court.

2. Whether the decision should reach all detainees or only those whose habeas proceedings are still underway

Twenty of the seventy Golden Venture detainees have abandoned their

legal appeals and are awaiting deportation. Therefore, a decision to

transfer or release the detainees could be limited to those whose habeas petitions remain active and who face at least several additional months of detention. Such a limitation would be complicated by the fact that detainees who have abandoned their legal

appeals can change their minds at any time prior to actual

COPY

deportation. Were they to resist deportation, we would then have to decide whether to treat them in the same manner as those who had previously been transferred or released.

RECOMMENDATION

That [Enter recommendation text here]

That [Enter recommendation text here]

Approve _____

Disapprove _____ [Optional]

Attachment

Tab [I or A] [Enter brief description of attachment]

COPY

MS Mail

DATE-TIME 05 August 96 18:45
FROM Malley, Robert
CLASSIFICATION UNCLASSIFIED
SUBJECT Golden Venture [UNCLASSIFIED]
TO Letts, Kelly J.
CARBON_COPY Baker, James E.
TEXT_BODY

Here it is:

[[GOLDEN.DOC : 4702 in GOLDEN.DOC]][[GOLDENA.DOC : 4703 in
GOLDENA.DOC]]

ATTACHMENT
FILE DATE 5 August 96 18:44

ATTACHMENT
FILE NAME GOLDEN.DOC

cc: Vice President
Chief of Staff

ACTION

MEMORANDUM FOR THE PRESIDENT

FROM: ANTHONY LAKE
JACK QUINN
CAROL RASCO
JOHN HILLEY

SUBJECT: Golden Venture Detainees

Purpose

To review current Administration policy concerning the detention
of

COPY

Chinese nationals from the Golden Venture.

Background

In a recent conversation with Representative Goodling, you suggested that you would review options to address the continued detention of 46 Chinese nationals in York County, Pennsylvania.

The Golden Venture: The 46 detainees in York County were among some 282 Chinese nationals who tried to enter the United States illegally in 1993 aboard the Golden Venture. The incident symbolized increased efforts of Chinese alien smugglers; Chinese nationals who were on the ship pledged as much as \$30,000 each to alien smugglers for passage. The aliens were placed in exclusion or deportation proceedings and many have raised asylum claims, in particular based on China's coercive family planning practices. They have been held in jail for three years.

Legal background: Under current law, coercive family practices generally are not grounds for asylum. However, pursuant to an administrative, humanitarian relief program you approved in 1994, release from detention and protection from deportation may be provided Chinese nationals who have suffered severe mistreatment related to coercive family planning practices or who have well-founded fears of return to severe mistreatment. The Administration has indicated support for legislation currently before the Congress providing statute-based protection to those who are now afforded administrative relief. (However, the provisions are included in the Immigration bill and other legislation the Administration otherwise does not support.)

Antiterrorism Bill: Under the recently passed antiterrorism bill, exclusion of illegal aliens such as the Golden Venture migrants will be greatly accelerated. The bill will deny illegal aliens the various levels of appeal they enjoy today, making a three-year detention under these circumstances very unlikely. The bill should have a significant deterrence effect on alien smuggling.

COPY

Status of Golden Venture migrants: To date, one hundred and five Golden Venture migrants have been deported to China. Thirty-four were granted asylum and have been released. Twelve have been resettled in third countries. Eight were granted humanitarian relief from deportation based on the administrative procedures described above. Forty-four were released on bond or (in the case of juveniles) placed in foster homes. (Six drowned while attempting to reach our shores and six escaped custody.)

Therefore, a total of sixty-seven Golden Venture migrants remain in detention; of these, eighteen have abandoned their legal appeals and are awaiting deportation while forty-nine have pending habeas petitions in federal court. Final resolution of their cases is not expected until the end of the year at the earliest. The geographic breakdown is as follows: Forty-six are at York County; sixteen at Bakersfield (CA); and the rest in New Orleans and Winchester (VA).

INS detention policy: While U.S. law mandates the detention of persons who have attempted to enter our country without permission, the Immigration and Naturalization Service (INS) is authorized to parole them where it would be "strictly in the public interest." ("Public interest" includes humanitarian considerations.) However, in order to deter future alien smuggling, the Administration strictly applied its detention policy to the Chinese migrants. DOJ, INS and Coast Guard believe this detention policy has discouraged alien smuggling from China.

Appeals from Congress and other groups: Twenty-eight Representatives have written to urge the immediate release of the Golden Venture detainees. They include Representatives Goodling, Gilman, Hyde, Smith, Berman, and Pelosi. Numerous advocacy groups have made the same request.

ISSUE #1: POSSIBLE COURSES OF ACTION

Option 1. Stay the course: maintain current detention: DOJ, INS and Coast Guard strongly recommend that we maintain the 67 aliens in

COPY

detention
 pending resolution of their cases. They stress that all
 detainees
 have been determined not to be eligible for asylum or
 administrative
 relief and argue that a change in detention status could
 undermine
 our successful policy of deterring alien smuggling. Finally, a
 change could convince detainees who have given up their legal
 appeals
 and are awaiting deportation to change their minds, which they
 can
 do until being deported.

Option 2. Soft Detention on a Military Base: The INS has placed
 small numbers
 of detainees in "soft custody" on military bases in some
 circumstances, for example for minors at risk of harm. DoD
 recommends
 against this option, pointing to prior instances of violence
 caused
 by migrants detained on bases (e.g., the experience of the Mariel
 Cubans). To address this issue, the aliens could be moved to a
 base
 that is being closed and is presently unoccupied. (We have
 identified such a base in Seneca, NY.) However, it is unclear
 whether
 the detainees would regard moving to a military base as an
 improvement in their lot given the broad support network they
 enjoy at
 York County, including legal assistance and English language
 classes.

Option 3. Soft Detention in Halfway Houses: Halfway houses have
 been used to
 hold aliens on prior occasions. DOJ and INS recommend against
 this
 option because of the risk that the aliens might flee or be
 abducted
 by representatives of the smuggling organizations seeking to
 recover
 the promised \$30,000 in the form of indentured servitude. (This
 already has happened with children who were placed in soft
 detention
 or foster homes.)

Option 4. Supervised Release: The INS can parole the detainees
 pending final
 disposition of the deportation proceedings and seek to place them
 with relatives or other responsible persons who would be asked to

COPY

post bond to minimize the risk of flight. Detainees would have to report regularly and be subjected to a curfew. This option would be applauded by advocacy groups and some on the Hill, but DOJ and INS strongly oppose it, arguing that it likely will result in the flight or abduction of a number of migrants and that release would undermine the legal position the government has taken from the outset. Moreover, given the likelihood that the government ultimately will prevail in the habeas cases, they believe that trying to remove the migrants after they have been released will create a more visible and controversial issue. On the other hand, releasing the detainees arguably would not have a significant impact on law enforcement objectives because much of the desired deterrent effect may have been achieved by the long detention period; moreover, provisions in the antiterrorism bill should further deter alien smuggling.

Option 5: Removal to Third Countries: An attorney representing some of the detainees has resettled ten of them in Ecuador and he is willing to continue his efforts. The U.S. also could demonstrate countries of the region. While this option would meet both humanitarian and law enforcement objectives, prior experience suggests it will be difficult to find interested third countries, particularly within an acceptable timeframe. Still, this could be pursued together with either of the above options.

ISSUE #2: DETAINEES AFFECTED BY DECISION

Any option other than maintaining the status quo will require deciding who among the Golden Venture detainees should benefit from the change in detention status. There are two questions:

- 1: Whether the decision should affect all Golden Venture detainees or only those in York County: The York County detainees are the only ones you discussed with Representative Goodling. However, it would be difficult to distinguish between these and other Golden

COPY

Venture detainees, and some migrants could challenge such a distinction in court.

2. Whether the decision should reach all detainees or only those whose habeas proceedings are still underway: Eighteen of the sixty-seven Golden Venture detainees have abandoned their legal appeals and are awaiting deportation. Therefore, a decision to transfer or release the detainees could be limited to the forty-nine whose habeas petitions remain active and who face at least several additional months of detention. Such a limitation would be complicated by the fact that detainees who have abandoned their legal appeals can change their minds and file a new habeas action at any time before actual deportation. If they do, we then would have to decide whether to treat them like those we had previously transferred or released.

RECOMMENDATION

That all Golden Venture detainees be released to responsible persons, subject to a reasonable bond and pending final resolution of the deportation cases. (Our recommendation.)

Approve _____ Disapprove _____

That Golden Venture detainees remain in detention pending final resolution of the deportation cases. (DoJ, INS, and Coast Guard recommendation.)

Approve _____ Disapprove _____

That third-country resettlement be pursued in the interim. (All agree.)

Approve _____ Disapprove _____

ATTACHMENT
FILE DATE

5 August 96 18:42

ATTACHMENT
FILE NAME

GOLDENA.DOC

COPY

August 5, 1996

ACTION

MEMORANDUM FOR ANTHONY LAKE

THROUGH: ERIC SCHWARTZ

FROM: ROB MALLEY

SUBJECT: Options for Golden Venture Detainees

Attached is a memorandum for the President providing background on the Golden Venture detainees and presenting five options:
Continued
detention; transfer to a military base; transfer to a halfway house;
release to relatives or responsible persons subject to posting of bond and pending final resolution of the deportation cases; and resettlement in third countries.

Subject to your approval, the memorandum recommends that the detainees be released pending final disposition of their cases (at which point they will be deported if possible.) This appears to be the only way to address the humanitarian concerns raised by Representative Goodling and others. By contrast, transferring the migrants (to a military base or a halfway house) would complicate their access to lawyers and deprive them of the network of support they have developed in York. While this option arguably could undermine our law enforcement objectives, the already prolonged period of detention and provisions of the recently passed antiterrorism bill that will expedite the exclusion of illegal aliens such as those from the Golden Venture should minimize this effect. DPC (Steve Warnath) concurs.

DOJ, INS and Coast Guard recommend that we maintain the status

COPY

quo.

They base this on the need to deter alien smuggling; the risk that the migrants will either flee or be absconded; the fact that all detainees have had access to legal and administrative relief; and the difficulty we will have in trying to deport the aliens once they have been released. NSC/Global concurs.

All agencies agree that we should try to resettle the migrants under either option.

Concurrence by: James Baker; Bill Danvers; Peter Boynton; Steve Warnath

RECOMMENDATION

That you sign the attached memorandum to the President.

Attachment

Tab I Memorandum to the President

COPY

MS Mail

DATE-TIME : 09 August 96 15:18
FROM Friedrich, M. K.
CLASSIFICATION UNCLASSIFIED
SUBJECT Package 5421 [UNCLASSIFIED]
TO Letts, Kelly J.
CARBON_COPY NO CC's on THIS MESSAGE
TEXT_BODY

As discussed. Also pls send a new disk over once you update w/ Jack Quinn's changes.

Thanks.

[[5421BC.DOC : 3927 in 5421BC.DOC]]

ATTACHMENT
FILE DATE 9 August 96 15:17

ATTACHMENT
FILE NAME 5421BC.DOC
5421
cc: Vice President
Chief of Staff

ACTION

MEMORANDUM FOR THE PRESIDENT

FROM: ANTHONY LAKE
JACK QUINN
CAROL RASCO
JOHN HILLEY

SUBJECT: Golden Venture Detainees

Purpose

To review current Administration policy concerning the detention
of

COPY

Chinese nationals from the Golden Venture.

Background

In a recent conversation with Representative Goodling, you suggested that you would review options to address the continued detention of 46 Chinese nationals in York County, Pennsylvania.

The Golden Venture: The 46 detainees in York County were among some 282 Chinese nationals who tried to enter the United States illegally in 1993 aboard the Golden Venture. The aliens were placed in exclusion or deportation proceedings, and many have raised asylum claims based on China's coercive family planning practices. They have been held in jail for three years.

A total of 67 Golden Venture migrants remain in detention nationwide; of these, eighteen have abandoned their legal appeals and are awaiting deportation while forty-nine have pending habeas petitions in federal court. Final resolution of their cases is not expected until the end of the year at the earliest. The geographic breakdown is as follows: 46 are at York County; 16 at Bakersfield (CA); and the rest in New Orleans and Winchester (VA).

Legal background: Under current law, coercive family practices generally are not grounds for asylum. However, pursuant to an administrative, humanitarian relief program you approved in 1994, release from detention and protection from deportation may be provided Chinese nationals who have suffered severe mistreatment related to coercive family planning practices or who have well-founded fears of return to severe mistreatment.

INS detention policy: While U.S. law mandates the detention of persons who have attempted to enter our country without permission, the Immigration and Naturalization Service (INS) is authorized to parole them where it would be "strictly in the public interest." However, in order to deter future alien smuggling, the Administration strictly applied its detention policy to the Chinese migrants. DOJ, INS and Coast Guard believe this detention policy has discouraged alien smuggling from China.

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Appeals from Congress and other groups: Twenty-eight Representatives have written to urge the immediate release of the Golden Venture detainees. They include Representatives Goodling, Gilman, Hyde, Smith, Berman and Pelosi. Numerous advocacy groups have made the same request.

ISSUE #1: POSSIBLE COURSES OF ACTION

Option 1: Stay the course -- maintain current detention: DOJ, INS and Coast Guard strongly recommend that we maintain the 67 aliens in detention pending resolution of their cases. They stress that INS has determined all detainees in this group are not eligible for asylum or administrative relief and argue that a change in detention status could undermine our deterrence of alien smuggling. Finally, a change could convince those detainees who have given up their legal appeals and are awaiting deportation to initiate new claims.

Option 2: Soft Detention on a Military Base: The INS has placed small numbers of detainees in "soft custody" on military bases in some circumstances, for example for minors at risk of harm. DoD recommends against this option, pointing to prior instances of violence. To address this issue, the aliens could be moved to a base that is being closed and is unoccupied. However, it is unclear whether the detainees would regard moving to a military base as an improvement given the broad support network they enjoy at York County.

Option 3: Soft Detention in Halfway Houses: Halfway houses have been used to hold aliens on prior occasions. DOJ and INS recommend against this option because of the risk of flight or of abduction by representatives of the smuggling organizations. (This already has happened with children who were placed in soft detention or foster homes.)

Option 4: Supervised Release: The INS can parole the detainees pending final disposition and seek to place them with responsible persons who would post bond. This option would be applauded by advocacy groups and some on the Hill, but DOJ and INS strongly

COPY

oppose
it, arguing that it likely will result in the flight or abduction
of
migrants, and it would undermine the government's legal position.

Moreover, given the likelihood that the government ultimately
will
prevail in the forty-nine habeas cases, they believe that trying
to
remove the migrants after they have been released will create a
more
visible and controversial issue.

On the other hand, releasing the detainees arguably would not
hurt
law enforcement objectives because much of the desired deterrent
effect may have been achieved by the long detention period. In
addition, provisions in the antiterrorism legislation you signed
earlier this year should further deter alien smuggling.

Option 5: Removal to Third Countries: An attorney representing
some of the detainees has resettled ten of them in Ecuador, and
he is
willing to continue his efforts. The United States also could
d, marche countries of the region. Prior experience suggests,
however, that it will be difficult to find interested third
countries,
particularly within an acceptable timeframe. Still, this could
be
pursued together with either of the above options.

ISSUE #2: DETAINEES AFFECTED BY DECISION

Any option other than maintaining the status quo will require
deciding who among the Golden Venture detainees should benefit
from
the change in detention status. There are two questions:

1. Whether the decision should affect all Golden Venture
detainees
or only those in York County: The York County detainees are the
only
ones you discussed with Representative Goodling. However, it
would
be difficult to distinguish between these and other Golden
Venture
detainees, and some migrants could challenge such a distinction
in
court.

COPY

2. Whether the decision should reach all detainees or only those whose habeas proceedings are still underway: Eighteen of the sixty-seven Golden Venture detainees have abandoned their legal appeals and are awaiting deportation. Therefore, a decision to transfer or release the detainees could be limited to the forty-nine whose habeas petitions remain active. Such a limitation could, however, lead detainees who have abandoned their legal appeals to file new habeas actions at any time before actual deportation.

RECOMMENDATION

That all Golden Venture detainees be released to responsible persons, subject to reasonable bond and pending final resolution of the deportation cases. (Our recommendation)

Approve _____

Disapprove _____

That Golden Venture detainees remain in detention pending final resolution of the deportation cases. (DOJ, INS and Coast Guard recommendation.)

Approve _____

Disapprove _____

That third-country resettlement be pursued in the interim. (All agree.)

Approve _____

Disapprove _____

COPY

M S M a i l

DATE-TIME 10 August 96 16:31
FROM Sestak, Joseph A.
CLASSIFICATION UNCLASSIFIED
SUBJECT FW: Golden Venture [UNCLASSIFIED]
TO Malley, Robert
CARBON_COPY Schwartz, Eric P.
TEXT_BODY

Rob,
Thanks. Regret I was gone last week. Is there a final decision (your paper is well laid out)?? r, Joe

From: Malley, Robert
To: Boynton, Peter J.; Danvers, William C.; Kreczko, Alan J.; Schwartz, Eric P.; Sestak, Joseph A.
CC: /R, Record at A1; @LEGISLAT-Legislative Affairs; @LEGAL - Legal Advisor
Subject: Golden Venture [UNCLASSIFIED]
Date: Friday, August 02, 1996 04:53 PM

[[GOLDEN.DOC : 4135 in GOLDEN.DOC]]

Attached is a draft memo to the POTUS re. the Golden Venture detainees. As you will see, there is no recommendation yet.

My own personal view (though I am more than open to persuasion) is that we should release all the detainees (barring some unknown circumstances -- i.e., danger to the community) and place them with relatives or other responsible persons. We would not abandon efforts to deport them, and we would pursue at the same time third country resettlement options.

The reason I am leaning toward this option is that if we want to do something (and the POTUS certainly has suggested he does), then this is the only option that appears to make sense. Moving them to a military base or some other facility would barely improve their lot, and in fact would require moving them from York County where they enjoy a broad support network. As for extending the decision to all detainees (and not only those at York), I would be fearful of a legal challenge to a distinction for which I see no basis. Finally, we could limit the decision to those whose habeas petitions are still pending, but if we are willing to release 50, why not extend to the 20 others who in any event probably would change their minds and chose to resist deportation if they saw that we were changing their status.

COPY

Anyway, take a look and provide me with comments. Please get back to me by tuesday, as Sandy has asked me for this repeatedly

Thanks

ATTACHMENT
FILE DATE

2 August 96 16:30

ATTACHMENT
FILE NAME

GOLDEN.DOC

cc: Vice President
Chief of Staff

ACTION

MEMORANDUM FOR THE PRESIDENT

FROM: ANTHONY LAKE
JACK QUINN
CAROL RASCO
JOHN HILLEY

SUBJECT: Golden Venture Detainees

Purpose

To review current Administration policy concerning the detention of Chinese nationals from the Golden Venture.

Background

In a recent conversation with Representative Goodling, you suggested that you would review options to address the continued detention of 47 Chinese nationals in York County, Pennsylvania.

The Golden Venture

The 47 detainees in York County were among some 282 Chinese

COPY

nationals who tried to enter the United States illegally in 1993 aboard the Golden Venture. The Golden Venture symbolized increased efforts of Chinese alien smugglers; Chinese nationals who were on the ship pledged as much as \$30,000 each to alien smugglers for passage. The aliens were placed in exclusion or deportation proceedings and many have raised asylum claims, in particular based on China's coercive family planning practices.

Legal background

Under current law, coercive family practices generally are not grounds for asylum. However, pursuant to an administrative regime you approved in 1994, release from detention and protection from deportation may be provided asylum-seekers who have suffered severe mistreatment related to coercive family planning practices or who have well-founded fears of return to severe mistreatment. The Administration has indicated support for legislation currently before the Congress that would provide statute-based protection to those who are now afforded administrative relief. (However, the provisions are included in the immigration bill and other legislative proposals the Administration otherwise does not support.)

Status of Golden Venture migrants

To date, one hundred and three Golden Venture migrants have been deported to China. Thirty-four were granted asylum and have been released. Eleven have been resettled in third countries. Eight were granted humanitarian relief from deportation based on the administrative procedures described above. Forty-four were released on bond or (in the case of juveniles) placed in foster homes. (In addition, six drowned while attempting to reach our shores and six escaped custody.)

Therefore, a total of seventy Golden Venture migrants remain in detention; of these, twenty have abandoned their legal appeals and are awaiting deportation while fifty have pending habeas corpus

COPY

petitions in federal court. Final resolution of their cases is not expected until the end of the year at the earliest.

The geographic breakdown is as follows: Forty-seven are at York County, of whom eleven have given up their appeals and thirty-six have pending habeas petitions. Seventeen are at Bakersfield (CA)

--

eight have given up their appeals and nine have pending petitions.

The rest are in New Orleans and Winchester (VA).

INS detention policy

While U.S. law mandates the detention of persons who have attempted to enter our country without permission, the Immigration and Naturalization Service (INS) is authorized to parole such persons where it would be "strictly in the public interest." However, in order to deter future alien smuggling, the Administration strictly applied its detention policy to the Chinese migrants. DOJ and INS believe this detention policy has effectively discouraged alien smuggling from China.

Appeals from Congress and other groups

Twenty eight Representatives have written to urge the immediate release of the Golden Venture detainees. They include Representatives Goodling, Gilman, Hyde, Smith, Berman, and Pelosi.

Numerous advocacy groups have made the same request.

ISSUE #1: POSSIBLE COURSES OF ACTION

Option 1. Stay the course: maintain current detention.

DOJ, INS and the Coast Guard strongly recommend that we maintain the

70 aliens in detention pending resolution of their cases. They stress that all detainees have been determined not to be eligible for

asylum and not to qualify for administrative relief. They also argue that our strict detention policy has succeeded in deterring alien smuggling. Finally, any modification in status could convince

detainees who have given up their legal appeals and are awaiting deportation to change their minds, which they can do until actual deportation.

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Option 2. Soft Detention on a Military Base

The INS has placed detainees in "soft custody" on military bases in some circumstances, for example when minors at risk of harm have had to be detained. Military bases can be less expensive than private contracting facilities and provide more security. DoD recommends against this option, pointing to prior instances of violence caused by migrants detained on military bases (e.g., the experience of the Mariel Cubans). To address these issues, the aliens could be moved to a base that is in the process of closing and presently unoccupied. However, it is unclear whether moving the detainees to a military base would improve their lot given the broad support network they enjoy at York County, including legal assistance and English language classes.

Option 3. Soft Detention in Halfway Houses

Halfway houses have been used to hold aliens on prior occasions; they generally are run by non-governmental organizations or public contractors who are responsible for the education and medical care of the residents. DOJ and INS recommend against this option because of the high risk that the aliens might flee.

Option 4. Supervised Release

The INS has the ability to parole the detainees and seek to place them with relatives or other responsible persons. Detainees would be required to report regularly to a volunteer organization or public interest group and be subjected to a curfew. While this option would be applauded by advocacy groups and some on the Hill, DOJ and INS strongly oppose it, arguing that it is likely to result in the flight of a number of aliens and that release would undermine the legal position the government has taken since the outset of this

COPY

case. Moreover, given the likelihood that the government ultimately will prevail in the habeas cases, they believe that trying to remove the migrants after they have been released would create a more visible and controversial issue. On the other hand, DOJ and INS recognize that releasing the detainees would not have a significant impact on our law enforcement objectives since much of the desired deterrent effect has been achieved by the long period of detention.

Option 6: Removal to Third Countries

An attorney representing some of the detainees has resettled ten of them as refugees in Ecuador and he is willing to continue his efforts. The U.S. also could d,marche countries of the region. While this option would meet both humanitarian and law enforcement objectives, prior experience suggests it will be difficult to find interested third countries, particularly within an acceptable timeframe. This option could be pursued in conjunction with a decision to transfer or release the detainees.

ISSUE #2: DETAINEES AFFECTED BY DECISION

Any option other than maintaining the status quo will require deciding who among the Golden Venture detainees should benefit from the change in status. There are two questions:

1: Whether the decision should affect all Golden Venture detainees or only those in York County

The York County detainees are the only ones you discussed with Representative Goodling. However, it would be difficult to distinguish between these and other detainees, and some persons could chose to challenge such a distinction in court.

2. Whether the decision should reach all detainees or only those whose habeas proceedings are still underway

Twenty of the seventy Golden Venture detainees have abandoned their legal appeals and are awaiting deportation. Therefore, a decision to

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transfer or release the detainees could be limited to those whose habeas petitions remain active and who face at least several additional months of detention. Such a limitation would be complicated by the fact that detainees who have abandoned their legal appeals can change their minds at any time prior to actual deportation. Were they to resist deportation, we would then have to decide whether to treat them in the same manner as those who had previously been transferred or released.

RECOMMENDATION

That [Enter recommendation text here]

That [Enter recommendation text here]

Approve _____

Disapprove _____ [Optional]

Attachment

Tab [I or A] [Enter brief description of attachment]

COPY

DATE-TIME 11 September 96 16:09
FROM Malley, Robert
CLASSIFICATION UNCLASSIFIED
SUBJECT package [UNCLASSIFIED]
TO Letts, Kelly J.
CARBON_COPY NO CC's on THIS MESSAGE

TEXT_BODY

Thanks!

[[GOLDETL.DOC : 4185 in GOLDETL.DOC]][[GOLDEPDT.DOC : 4186 in
GOLDEPDT.DOC]]

ATTACHMENT
FILE DATE

11 September 96 15:2

ATTACHMENT
FILE NAME

GOLDETL.DOC

September 11, 1996

ACTION

MEMORANDUM FOR ANTHONY LAKE
SANDY BERGER

THROUGH: ERIC SCHWARTZ

FROM: ROB MALLEY

SUBJECT: Golden Venture Detainees

Attached at Tab I is a memorandum to the President responding to
his
two questions concerning the Golden Venture detainees. The
President's questions appear on the original Golden Venture
memorandum
at Tab A.

COPY

Concurrence by: Alan Kreczko; Steve Warnath; Bill Danvers

RECOMMENDATION

That you sign the attached memorandum to the President.

Attachments

Tab I Memorandum to the President

Tab A Original Memorandum on Golden Venture detainees

ATTACHMENT
FILE DATE

11 September 96 13:49

ATTACHMENT
FILE NAME

GOLDEPDT.DOC

cc: Vice President
Chief of Staff

INFORMATION

MEMORANDUM FOR THE PRESIDENT

FROM: ANTHONY LAKE
CAROL RASCO

SUBJECT: Golden Venture Detainees

You asked two questions regarding the possible disposition of the Golden Venture detainees (see attached memorandum at Tab. A).

1. How many of the 67 who remain in detention are alleging coercive family practices?

Although the Immigration and Naturalization Service (INS) does not have exact figures, almost all of the remaining detainees -- certainly more than 60 -- have raised asylum claims based on fear coercive family practices. Their claims were rejected by INS as lacking credibility.

COPY

2. What does fear of "severe mistreatment" mean?

Under the administrative, humanitarian relief program you approved in 1994, Chinese nationals who have suffered severe mistreatment related to coercive family planning practices or who have well-founded fears of return to severe mistreatment are released from detention and protected from deportation.

"Severe mistreatment" includes physical harm, destruction of property, severe fines, and imprisonment.

Attachment

Tab A Original memorandum on Golden Venture detainees

COPY

MS Mail

DATE-TIME 11 December 96 11:27
FROM Bass, Peter E.
CLASSIFICATION UNCLASSIFIED
SUBJECT FW: Golden Venture [UNCLASSIFIED]
TO Cicio, Kristen K.
Veit, Katherine M.
CARBON_COPY NO CC's on THIS MESSAGE
TEXT_BODY

From: Malley, Robert
To: Bass, Peter E.
CC: /R, Record at A1; @NSA - Natl Security Advisor
Subject: Golden Venture [UNCLASSIFIED]
Date: Monday, December 02, 1996 06:48 PM

[[GOLDEN3.DOC : 2853 in GOLDEN3.DOC]][[5421NEW.DOC : 2854 in
5421NEW.DOC
]] [[6154PRES.DOC : 2855 in 6154PRES.DOC]][[6945PRES.DOC : 2856 in
6945PRES.DOC]]

Peter,

Attached are three memos that were sent to the President on the Golden
Venture detainees:

#5421, which is the initial decision memo. (As I recall, you rewrote it and
shortened it, but I do not have that final version in my files.)

6154, which responds to two questions the President had in reaction to the
memo.

#6945, which informs the President of the impact of the immigration bill on
the issue.

I also have attached a brief memo to Sandy framing the issue.

Please let me know if you need anything else.

See you,

Rob

COPY

ATTACHMENT
FILE DATE

2 December 96 18:46

ATTACHMENT
FILE NAME

GOLDEN3.DOC

December 2, 1996

INFORMATION

MEMORANDUM FOR SANDY BERGER

FROM: ROB MALLEY

SUBJECT: Golden Venture Detainees

I understand that you will be meeting with Leon Panetta to discuss the matter of the Golden Venture detainees.

Overview of Issue

As you will recall, the basic issue for decision is whether to continue to maintain in detention all 67 Golden Venture migrants or to agree to supervised release until final resolution of their legal claims, provided they can post bond. To date, they have been detained for 3 and a half years.

I expect the COS to voice the principal concern raised by DOJ and INS -- that release might encourage alien smugglers. This cannot be dismissed out of hand, especially in light of continued attempts to smuggle Chinese migrants. However, there are strong counter-arguments based on the unique circumstances of this case:

☐ the detention in this instance was exceptional and largely unprecedented -- a deterrent in and of itself. A decision here would not have implications for any other known case of detained aliens. (As you will recall, the length of detention was due

COPY

both
to the legal complications of the case and to the strict
detention
policy that was followed in this instance.)

☐ the circumstances of this case are highly unlikely to recur
given
the expedited exclusion provisions of the newly passed
immigration
bill. Under this bill, the case of aliens such as those on the
Golden Venture should be resolved within a matter of weeks at
most.

Recent Development

The immigration bill makes fear of coercive family planning
practices a ground for asylum. As a result, most of the Golden
Venture cases are likely to be reopened to permit the aliens to
make
their asylum claims before the Board of Immigration Appeals (BIA)
or
an immigration judge.

While the precise number of detainees who will be found to have
valid claims and granted asylum is unknown, it is clear that the
process of redetermining their claims will take a significant
amount
of time. In other words, given the new law, we cannot expect any
significant number of deportations of remaining detainees to take
place in the near future.

Several Members of Congress (Hyde, Goodling, and Smith) have
written
urging the President to release the detainees in light of the
adoption of this provision.

ATTACHMENT
FILE DATE

9 August 96 14:39

ATTACHMENT
FILE NAME

5421NEW.DOC
5421
cc: Vice President
Chief of Staff

COPY

ACTION

MEMORANDUM FOR THE PRESIDENT

FROM: ANTHONY LAKE
JACK QUINN
CAROL RASCO
JOHN HILLEY

SUBJECT: Golden Venture Detainees

Purpose

To review current Administration policy concerning the detention of Chinese nationals from the Golden Venture.

Background

In a recent conversation with Representative Goodling, you suggested that you would review options to address the continued detention of 46 Chinese nationals in York County, Pennsylvania.

The Golden Venture: The 46 detainees in York County were among some 282 Chinese nationals who tried to enter the United States illegally in 1993 aboard the Golden Venture. The aliens were placed in exclusion or deportation proceedings, and many have raised asylum claims based on China's coercive family planning practices. They have been held in jail for three years.

A total of 67 Golden Venture migrants remain in detention nationwide; of these, eighteen have abandoned their legal appeals and are awaiting deportation while forty-nine have pending habeas petitions in federal court. Final resolution of their cases is not expected until the end of the year at the earliest. The geographic breakdown is as follows: 46 are at York County; 16 at Bakersfield (CA); and the rest in New Orleans and Winchester (VA).

Legal background: Under current law, coercive family practices generally are not grounds for asylum. However, pursuant to an administrative, humanitarian relief program you approved in 1994,

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release from detention and protection from deportation may be provided Chinese nationals who have suffered severe mistreatment related to coercive family planning practices or who have well-founded fears of return to severe mistreatment.

INS detention policy: While U.S. law mandates the detention of persons who have attempted to enter our country without permission, the Immigration and Naturalization Service (INS) is authorized to parole them where it would be "strictly in the public interest." However, in order to deter future alien smuggling, the Administration strictly applied its detention policy to the Chinese migrants. DOJ, INS and Coast Guard believe this detention policy has discouraged alien smuggling from China.

Appeals from Congress and other groups: Twenty-eight Representatives have written to urge the immediate release of the Golden Venture detainees. They include Representatives Goodling, Gilman, Hyde, Smith, Berman and Pelosi. Numerous advocacy groups have made the same request.

ISSUE #1: POSSIBLE COURSES OF ACTION

Option 1: Stay the course -- maintain current detention: DOJ, INS and Coast Guard strongly recommend that we maintain the 67 aliens in detention pending resolution of their cases. They stress that INS has determined all detainees in this group are not eligible for asylum or administrative relief and argue that a change in detention status could undermine our deterrence of alien smuggling. Finally, a change could convince those detainees who have given up their legal appeals and are awaiting deportation to initiate new claims.

Option 2: Soft Detention on a Military Base: The INS has placed small numbers of detainees in "soft custody" on military bases in some circumstances, for example for minors at risk of harm. DoD recommends against this option, pointing to prior instances of violence. To address this issue, the aliens could be moved to a base that is being closed and is unoccupied. However, it is unclear whether the detainees would regard moving to a military base as an improvement given the broad support network they enjoy at York

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County.

Option 3: Soft Detention in Halfway Houses: Halfway houses have been used to hold aliens on prior occasions. DOJ and INS recommend against this option because of the risk of flight or of abduction by representatives of the smuggling organizations. (This already has happened with children who were placed in soft detention or foster homes.)

Option 4: Supervised Release: The INS can parole the detainees pending final disposition and seek to place them with responsible persons who would post bond. This option would be applauded by advocacy groups and some on the Hill, but DOJ and INS strongly oppose it, arguing that it likely will result in the flight or abduction of migrants, and it would undermine the government's legal position.

Moreover, given the likelihood that the government ultimately will prevail in the 49 habeas cases, they believe that trying to remove the migrants after they have been released will create a more visible and controversial issue.

On the other hand, releasing the detainees arguably would not hurt law enforcement objectives because much of the desired deterrent effect may have been achieved by the long detention period. In addition, provisions in the antiterrorism legislation you signed earlier this year should further deter alien smuggling.

Option 5: Removal to Third Countries: An attorney representing some of the detainees has resettled ten of them in Ecuador, and he is willing to continue his efforts. The United States also could d,marche countries of the region. Prior experience suggests, however, that it will be difficult to find interested third countries, particularly within an acceptable timeframe. Still, this could be pursued together with either of the above options.

ISSUE #2: DETAINEES AFFECTED BY DECISION

Any option other than maintaining the status quo will require

COPY

deciding who among the Golden Venture detainees should benefit from the change in detention status. There are two questions:

1. Whether the decision should affect all Golden Venture detainees or only those in York County: The York County detainees are the only ones you discussed with Representative Goodling. However, it would be difficult to distinguish between these and other Golden Venture detainees, and some migrants could challenge such a distinction in court.

2. Whether the decision should reach all detainees or only those whose habeas proceedings are still underway: Eighteen of the sixty-seven Golden Venture detainees have abandoned their legal appeals and are awaiting deportation. Therefore, a decision to transfer or release the detainees could be limited to the forty-nine whose habeas petitions remain active. Such a limitation could, however, lead detainees who have abandoned their legal appeals to file new habeas actions at any time before actual deportation.

RECOMMENDATION

That all Golden Venture detainees be released to responsible persons, subject to reasonable bond and pending final resolution of the deportation cases. (Messrs. Lake's and Hilley's, and Ms. Rosco's recommendation, although the DOJ arguments have merit.)

Approve _____

Disapprove _____

That Golden Venture detainees remain in detention pending final resolution of the deportation cases. (DOJ, INS and Coast Guard recommendation. Jack Quinn concurs in this recommendation.)

Approve _____

Disapprove _____

COPY

That third-country resettlement be pursued in the interim. (All agree.)

Approve _____

Disapprove _____

**ATTACHMENT
FILE DATE**

12 September 96 17:47

**ATTACHMENT
FILE NAME**

6154PRES.DOC

6154

cc: Vice President

Chief of Staff

ACTION

MEMORANDUM FOR THE PRESIDENT

**FROM: ANTHONY LAKE
CAROL RASCO**

SUBJECT: Golden Venture Detainees.

You asked two questions regarding the possible disposition of the Golden Venture detainees (see attached memorandum at Tab. A).

1. How many of the 67 who remain in detention are alleging coercive family practices?

Although the Immigration and Naturalization Service (INS) does not have exact figures, almost all of the remaining detainees -- certainly more than 60 -- have raised asylum claims based on fear of coercive family practices. Their claims were rejected by the INS as lacking credibility.

COPY

2. What does fear of "severe mistreatment" mean?

Under the administrative, humanitarian relief program you approved in 1994, Chinese nationals who have suffered severe mistreatment related to coercive family planning practices or who have well-founded fears of return to severe mistreatment are released from detention and protected from deportation.

"Severe mistreatment" includes physical harm, destruction of property, draconian fines, and imprisonment.

RECOMMENDATION

That you once again review the action memorandum at Tab A.

Attachment

Tab A Original memorandum on Golden Venture detainees

ATTACHMENT
FILE DATE

16 October 96 16:53

ATTACHMENT
FILE NAME

6945PRES.DOC
6945

cc: Vice President
Chief of Staff

INFORMATION

MEMORANDUM FOR THE PRESIDENT

FROM: ANTHONY LAKE

SUBJECT: Impact of Immigration Bill on Golden Venture
Detainees

The recently enacted immigration bill contains a provision that

COPY

will
affect the Golden Venture detainees and may weigh in your
ultimate
decision on whether to release them pending final resolution of
their
deportation cases.

Asylum and Coercive Family Planning Practices: The immigration
bill
that you recently signed into law contains a provision making
aliens
with a well-founded fear of persecution based on coercive family
planning practices eligible for asylum. This replaces the
administrative, humanitarian relief program you approved in 1994
designed to protect the same class of aliens from deportation.

Impact on Golden Venture Detainees: Practically all of the 67
Golden Venture migrants who remain in detention have made asylum
claims based on their fear of coercive family planning practices
in
China. As a result of the immigration bill, they are likely to
seek
to reopen their cases before the Board of Immigration Appeals
(BIA).
Practically speaking, this means that:

- ☐ some number of detainees probably will be found to have valid
claims by the BIA and granted asylum;
- ☐ even those cases that ultimately will result in deportation will
not be resolved for some time. In other words, and barring a
decision to release the migrants in the interim, they are likely
to
remain in detention for several additional months.

COPY

Withdrawal/Redaction Sheet

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. email	Eric Schwartz to Robert Malley re: gv (4 pages)	01/13/1997	P5 6406
002. email	Robert Malley to Eileen Biernacki et al re: Golden Venture (4 pages)	01/15/1997	P5 6407
003. email	Robert Malley to Kelly Letts re: package (5 pages)	01/16/1997	P5 6408
004. email	Alan Kreczko to Gordon Bendick (4 pages)	01/21/1997	P5 6409
005. email	Robert Malley to William Danvers and Alan Kreczko re: Golden Venture (4 pages)	02/11/1997	P5 6410

COLLECTION:

Clinton Presidential Records
 NSC Emails
 MSMail - Record (Sept 94 - Sept 97) ([Immigration and Naturalization])
 OA/Box Number: 590000

FOLDER TITLE:

[01/06/1997 - 02/20/1997]

2011-1044-F
 ds362

RESTRICTION CODES

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

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

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

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

RR. Document will be reviewed upon request.

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

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

M S M a i l

DATE-TIME 13 January 97 16:00
FROM Schwartz, Eric P.
CLASSIFICATION UNCLASSIFIED
SUBJECT gv [UNCLASSIFIED]
TO Malley, Robert
CARBON_COPY NO CC's on THIS MESSAGE
TEXT_BODY

Rob:

You didn't address the question of whether other aliens smuggled through criminal syndicates are detained all the time.

My changes.

[[ROBGV.DOC : 4109 in ROBGV.DOC]]

ATTACHMENT
FILE DATE

13 January 97 15:44

ATTACHMENT
FILE NAME

ROBGV.DOC

cc: Vice President
Chief of Staff

ACTION

MEMORANDUM FOR THE PRESIDENT

FROM: SAMUEL BERGER
JOHN HILLEY
JACK QUINN
BRUCE REED

SUBJECT: Golden Venture Detainees

Purpose

To review current Administration policy concerning the detention

COPY

of
Chinese nationals from the Golden Venture.

Background

Status of Golden Venture Detainees: A total of 55 migrants from the Golden Venture -- 52 men and 3 women -- currently remain in detention. (The decrease since the last memorandum is due to a combination of deportations to China and releases on various grounds.)

Their asylum claims were rejected by the immigration courts, and the Immigration and Naturalization Service (INS) subsequently found

that they did not qualify under its humanitarian relief program for

victims -- or those threatened by -- coercive family planning.

Most

of the detainees now have habeas claims in federal courts. In all

but four cases, the claims are based on fear of coercive family planning practices.

Impact of Immigration Bill: At the time the migrants' claims were

rejected by the immigration courts, fear of coercive family planning

practices did not constitute a recognized basis for asylum. This has

been changed by the recently enacted immigration bill. This legal

modification applies to the Golden Venture detainees who are therefore asking to reopen their cases before the immigration tribunals to seek an asylum determination under the terms of the new

law. As a result, and barring a decision to release the migrants in

the interim, the aliens are likely to remain in detention for a significant amount of time as their cases once again come before immigration judges, the Board of Immigration Appeals, and federal district courts if necessary. (Although most of the claimants are men, they could be deemed eligible if it is determined they were severely punished, or risked severe punishment, for avoiding forced

sterilization or for helping their spouses to avoid abortions.)

Discussion of Options

Option 1: Maintain current detention pending resolution of cases.

COPY

This option is supported by the Departments of Justice and State and by the Coast Guard, and is justified essentially by law enforcement consideration. Under PDD 9 (Alien Smuggling), our strict policy has been to maintain in detention smuggled aliens placed in exclusion proceedings. Releasing the migrants would send the wrong message and risks encouraging future smuggling. Moreover, we should expect a number of released migrants to flee and fail to appear at future hearings.

Option 2: Supervised Release pending final resolution of cases. This option would be applauded by advocacy groups as well as several Members of Congress, twenty-eight of whom have written urging that you take such action. (They include Reps. Goodling, Gilman, Hyde, Smith, Berman, and Pelosi). While release would be at odds with the detention principle reflected in PDD 9, the circumstances of the Golden Venture detainees are unique: Because of the complex legal issues raised in this case (which involved allegations of political interference that ultimately were rejected), the migrants have now spent over three and a half years in detention. This far exceeds the 62-day average time for similarly situated illegal aliens. Indeed, the INS is unaware of any other alien currently in detention who has been held for over three years awaiting resolution of his legal claims. (Some aliens have been held for over three years, but their legal claims have been resolved and their continued detention is due solely to their country of origin's refusal to take them back.)

Release could be justified by strong humanitarian considerations without undermining law enforcement objectives insofar as much of the desired deterrent effect has been achieved by the prolonged detention period. In addition, provisions in the immigration bill providing for expedited exclusion of illegal aliens should further discourage alien smuggling.

COPY

RECOMMENDATION

That the detainees be released subject to reasonable bond and pending final resolution of the deportation cases.

Approve _____

Disapprove _____

That the detainees remain in detention pending final resolution of their cases. (DOJ, State, and Coast Guard recommendation.)

Approve _____

Disapprove _____

COPY

6407

M S M a i l

DATE-TIME 15 January 97 12:29
FROM Malley, Robert
CLASSIFICATION UNCLASSIFIED
SUBJECT Golden Venture [UNCLASSIFIED]
TO Biernacki, Eileen V.
Friedrich, M. K.
Hilliard, Brenda I.
Joshi, M. Kay
Millison, Cathy L.
CARBON_COPY Kessinger, Jodi
TEXT_BODY

Please pass to NES

Nancy,

Attached is the revised memorandum. It includes State's and Quinn's views. Hilley apparently does not want to state his views at this time; if he wants to weigh in, he will do so when memo comes to him. We should get Reed's views later today.

Still no luck with OVP, but I have a call in.

[[GOLDEN5.DOC : 3152 in GOLDEN5.DOC]]

ATTACHMENT
FILE DATE 15 January 97 12:25

ATTACHMENT
FILE NAME GOLDEN5.DOC

cc: Vice President
Chief of Staff

ACTION

MEMORANDUM FOR THE PRESIDENT

FROM: SAMUEL BERGER
JOHN HILLEY

COPY

JACK QUINN
BRUCE REED

SUBJECT: Golden Venture Detainees

Purpose

To review current Administration policy concerning the detention of Chinese nationals from the Golden Venture.

Background

In response to a previous memorandum on this issue, you requested the views of the Vice-President and the Chief of Staff. This memorandum provides those views and an update of the situation.

Status of Golden Venture Detainees: A total of 55 migrants from the Golden Venture -- 52 men and 3 women -- currently remain in detention. (The decrease since the last memorandum is due to a combination of deportations to China and releases on various grounds.)

Their asylum claims were rejected by the immigration courts, and the Immigration and Naturalization Service (INS) subsequently found that they did not qualify under its humanitarian relief program for victims of -- or those threatened by -- coercive family planning.

Most of the detainees now have habeas claims in federal courts. In all but four cases, the claims are based on fear of coercive family planning practices.

Impact of Immigration Bill: At the time the migrants' claims were rejected by the immigration courts, fear of coercive family planning practices did not constitute a recognized basis for asylum. This has been changed by the recently enacted immigration bill. This legal modification applies to the Golden Venture detainees who are therefore asking to reopen their cases before the immigration tribunals to seek an asylum determination under the terms of the new law. As a result, and barring a decision to release the migrants

COPY

in the interim, the aliens are likely to remain in detention for a significant amount of time as their cases once again come before immigration judges, the Board of Immigration Appeals, and federal district courts if necessary. (Although most of the claimants are men, they could be deemed eligible if, for example, it is determined they were severely punished, or risked severe punishment, for avoiding forced sterilization or for helping their spouses avoid abortions.)

United States Policy on Detention of Smuggled Aliens: Pursuant to PDD 9 (Alien Smuggling), our policy in recent years has been to maintain in detention smuggled aliens who are awaiting the outcome of their exclusion proceedings. The continued detention of the Golden Venture migrants would be consistent with this policy. However, the circumstances of the Golden Venture detainees are unique: Because of the complex legal issues raised in this case (which involved allegations of political interference that ultimately were rejected), the migrants have now spent over three and a half years in detention. This far exceeds the 62-day average time for similarly situated illegal aliens. Indeed, the INS is unaware of any other alien currently in detention who has been held for over three years awaiting termination of his exclusion proceedings. (Some aliens have been held for over three years, but their legal claims have been resolved and their continued detention is due solely to their country of origin's refusal to take them back.)

In the future, moreover, aliens smuggled into the United States are highly unlikely to face the prolonged detention experienced by the Golden Venture migrants. Indeed, the expedited exclusion provisions of the new immigration bill are designed to shorten to a maximum of a few weeks the length of exclusion proceedings.

Discussion of Options

Option 1: Maintain current detention pending resolution of cases.

COPY

This option is supported by the Departments of Justice and State and by the Coast Guard, and is justified principally by law enforcement considerations. Releasing the aliens would send the wrong message and risks encouraging future smuggling. We also can expect many aliens to flee and fail to appear at future hearings.

Option 2: Supervised Release pending final resolution of cases. This option would be applauded by advocacy groups as well as several Members of Congress, twenty-eight of whom have written urging that you take such action. (They include Reps. Goodling, Gilman, Hyde, Smith, Berman, and Pelosi). Release could be justified by strong humanitarian considerations without undermining law enforcement objectives insofar as much of the desired deterrent effect has been achieved by the prolonged detention period. Moreover, the expedited exclusion provisions of the immigration bill should help deter future illegal migration.

RECOMMENDATION

That the detainees be released subject to reasonable bond and pending final resolution of the deportation cases. (Mr. Berger's recommendation.)

Approve _____

Disapprove _____

That the detainees remain in detention pending final resolution of their cases. (DOJ, State, and Coast Guard recommendation. Jack Quinn concurs in this recommendation.)

Approve _____

Disapprove _____

COPY

6408

M S M a i l

DATE-TIME 16 January 97 17:10
FROM Malley, Robert
CLASSIFICATION UNCLASSIFIED
SUBJECT package [UNCLASSIFIED]
TO Letts, Kelly J.
CARBON_COPY NO CC's on THIS MESSAGE
TEXT_BODY

Kelly --

Could you prepare this? I will sign for everyone tomorrow morning.

Thanks

[[GOLDEN6.DOC : 4400 in GOLDEN6.DOC]][[GOLDEN5.DOC : 4401 in
GOLDEN5.DOC
]]

ATTACHMENT
FILE DATE 16 January 97 17:8
ATTACHMENT
FILE NAME GOLDEN6.DOC

January 16, 1997

ACTION

MEMORANDUM FOR SAMUEL BERGER

THROUGH: ERIC SCHWARTZ

FROM: ROB MALLEY

SUBJECT: Golden Venture Detainees

Attached is a memorandum to the President on the subject of the
Golden Venture detainees. Pursuant to his request, it includes

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the
views of the Vice-President and the Chief of Staff. It also
provides
an update on the situation.

Concurrence by: John Sparks; Will Davis

RECOMMENDATION

That you sign the attached memorandum to the President

Attachment
Tab I Memorandum to the President

ATTACHMENT
FILE DATE

16 January 97 16:26

ATTACHMENT
FILE NAME

GOLDEN5.DOC

cc: Vice President
Chief of Staff

ACTION

MEMORANDUM FOR THE PRESIDENT

FROM: SAMUEL BERGER
JOHN HILLEY
JACK QUINN
BRUCE REED

SUBJECT: Golden Venture Detainees

Purpose

To review current Administration policy concerning the detention
of
Chinese nationals from the Golden Venture.

Background

In response to a previous memorandum on this issue, you requested

COPY

the views of the Vice-President and the Chief of Staff. This memorandum provides those views and an update of the situation.

Status of Golden Venture Detainees: A total of 55 migrants from the Golden Venture -- 52 men and 3 women -- currently remain in detention. (The decrease since the last memorandum is due to a combination of deportations to China and releases on various grounds.)

Their asylum claims were rejected by the immigration courts, and the Immigration and Naturalization Service (INS) subsequently found

that they did not qualify under its humanitarian relief program for victims of -- or those threatened by -- coercive family planning.

Most of the detainees now have habeas claims in federal courts.

In all but four cases, the claims are based on fear of coercive family planning practices.

Impact of Immigration Bill: At the time the migrants' claims were

rejected by the immigration courts, fear of coercive family planning practices did not constitute a recognized basis for asylum. This has

been changed by the recently enacted immigration bill. This legal

modification applies to the Golden Venture detainees who are therefore asking to reopen their cases before the immigration tribunals to seek an asylum determination under the terms of the new

law. As a result, and barring a decision to release the migrants in

the interim, the aliens are likely to remain in detention for a significant amount of time as their cases once again come before immigration judges, the Board of Immigration Appeals, and federal district courts if necessary. While their claims were found not to

be credible for purposes of the administrative relief program, an immigration judge may well reach a different conclusion.

(Although

most of the claimants are men, they could be deemed eligible if, for

example, it is determined they were severely punished, or risked severe punishment, for avoiding forced sterilization or for helping

their spouses avoid abortions.)

COPY

United States Policy on Detention of Smuggled Aliens: Pursuant to PDD 9 (Alien Smuggling), our policy in recent years has been to maintain in detention smuggled aliens who are awaiting the outcome of their exclusion proceedings. The continued detention of the Golden Venture migrants would be consistent with this policy. However, the circumstances of the Golden Venture detainees are unique: because of the complex legal issues raised in this case (which involved allegations of political interference that ultimately were rejected), the migrants have now spent over three and a half years in detention. This far exceeds the 62-day average time for similarly situated illegal aliens. Indeed, the INS is unaware of any other non-criminal alien currently in detention who has been held for over three years awaiting termination of his exclusion proceedings. (Some aliens have been held for over three years, but their legal claims have been resolved and their continued detention is due solely to their country of origin's refusal to take them back.)

In the future, moreover, aliens smuggled into the United States are highly unlikely to face the prolonged detention experienced by the Golden Venture migrants. Indeed, the expedited exclusion provisions of the new immigration bill are designed to shorten to a maximum of a few weeks the length of exclusion proceedings. These provisions will take effect on April 1, 1997, and therefore cannot apply to the Golden Venture detainees.

Discussion of Options

Option 1: Maintain current detention pending resolution of cases.

This option is supported by the Departments of Justice and State and by the Coast Guard, and is justified principally by law enforcement

COPY

considerations. Releasing the aliens would send the wrong message and risks encouraging future smuggling. We also can expect many aliens to flee and fail to appear at future hearings.

Option 2: Supervised Release pending final resolution of cases. This option would be applauded by advocacy groups as well as several Members of Congress, twenty-eight of whom have written urging that you take such action. (They include Reps. Goodling, Gilman, Hyde, Smith, Berman, and Pelosi). Release could be justified by strong humanitarian considerations. While there is a risk that this might encourage future alien smuggling, we believe it is minimal given that much of the desired deterrent effect has been achieved by the prolonged detention period these individuals already have undergone. Moreover, the expedited exclusion provisions of the immigration bill should help deter future illegal migration.

RECOMMENDATION

That the detainees be released subject to reasonable bond and pending final resolution of the deportation cases. (Leon Panetta and Sandy Berger's recommendation.)

Approve _____

Disapprove _____

That the detainees remain in detention pending final resolution of their cases. (DOJ, State, and Coast Guard recommendation. Jack Quinn concurs in this recommendation.)

Approve _____

Disapprove _____

COPY

DATE-TIME 21 January 97 17:24
FROM Kreczko, Alan J.
CLASSIFICATION UNCLASSIFIED
SUBJECT FW: Terrorist Deportation [UNCLASSIFIED]

TO Bendick, Gordon L.
Burrell, Christina L.
Danvers, William C.
Davis, William K.

CARBON_COPY NO CC's on THIS MESSAGE

TEXT_BODY

Steve Simon, Mary Anne peters and Rob Malley have all associated with the recommendation indicated in the attachment below. Just need a chop from one of you so I can move this to Nancy.

From: Kreczko, Alan J.
To: Simon, Steven N.; Danvers, William C.; Peters, Mary A.; Malley, Robert
CC: /R, Record at A1; Kessinger, Jodi
Subject: Terrorist Deportation [UNCLASSIFIED]
Date: Tuesday, January 21, 1997 02:12 PM

[[TPCR.DOC : 4352 in TPCR.DOC]]

Steve/Bill/Maryanne/Rob,

The attached memo relates to an issue Nancy has been following closely. Before sending it to her, I would like to know whether you concur in the recommendation I have suggested, or would advocate a different course. (I can explain issue in greater detail if package is not clear.)

Jodi -- This is just FYI at this point, unless you want to show an early draft to Nancy.

ATTACHMENT
FILE DATE

21 January 97 14:0

ATTACHMENT
FILE NAME

TPCR.DOC

TO: SANDY BERGER
JACK QUINN

FROM: ALAN KRECZKO

COPY

SUBJECT: Detention of Terrorists

ISSUE

Whether to convey a position to the AG on the interpretation of a provision of the INA concerning detention of terrorists.

BACKGROUND

A recent amendment to the Immigration and Naturalization Act requires the AG to take into custody several classes of aliens, including certain criminal aliens and aliens who have engaged in terrorist activity, "when the alien is released, without regard to whether the alien is released on parole, supervised release or probation, and without regard to whether the alien may be arrested or imprisoned again for the same offense". The provision gives the AG discretion to release certain of the subclasses of listed aliens, but does not allow release of aliens who have engaged in terrorist activities. The Administration opposed this mandatory provision.

Now that it has been enacted, we need to decide how to interpret/implement it.

INS believes that the law should be read as requiring the AG to pick up any alien who is deportable on terrorist grounds and to put that alien in detention pending completion of deportation proceedings, without regard to whether the alien is a threat in the United States or a flight risk. By way of example, this interpretation would require the detention, pending deportation, of an Irish national who committed an act of terrorism 15 years ago in northern Ireland; entered the United States fraudulently; married an American and has American children; and has lived peacefully in the United States for the past ten years, even if the individual is no threat in the US and not a flight risk.

I believe the plain language of the provision is that the AG is

COPY

only
 required to put a deportable person in detention when the person
 is
 released from custody -- e.g. following conviction in the U.S. --
 in
 order to avoid a gap in detention. Under this reading, if an
 alien
 is not in detention, there is no requirement that the AG go out
 and
 find the person and put them in detention. (The AG would retain
 discretion under existing law to do so.)

DOJ/OLC has reviewed the matter and advised that either
 interpretation -- INS' or mine -- is legally available. It
 therefore
 becomes a legal policy issue which interpretation to choose.
 Interpretive issues concerning the INA are statutorily entrusted
 to
 the AG; however, we can offer a recommendation to her.

POLICY

I recommend that we tell the AG that we favor a narrow, or plain
 meaning interpretation of the statute, under which the AG is only
 required to put a person in detention pending deportation if they
 are
 otherwise being released from US custody. Reading the statute
 narrowly is consistent with the Administration opposition to the
 provision. Doing so also affords the AG greater discretion in
 determining detention priorities for aliens under deportation
 proceedings. As INS acknowledges, there are certain to be
 significant
 numbers of aliens encountered in a non-custodial setting who
 would
 be subject to mandatory detention under INS'-proposed reading of
 the
 statute but who the AG does not consider to be dangerous, a
 flight
 risk, or a high priority given limited detention space.
 Preserving
 flexibility for the AG would, INS acknowledges, increase the AG's
 ability to enforce the immigration laws through more effective
 use of
 detention space.

While acknowledging these arguments, INS and DOJ/Criminal will
 be
 recommending the AG interpret the statute broadly, applying to
 anyone

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deportable on terrorist grounds, whether or not the alien was ever in custody in the U.S. They cite the risk of congressional backlash, and the strong anti-terrorism stance of the Administration. They are also concerned that reading the statute to provide AG discretion will require them to make tough decisions on who to detain pending determination. They are concerned such individualized determinations will open them up to allegations/lawsuits over selective prosecution, if, for example, Arab terrorists are routinely incarcerated and Irish terrorists are not. They are also concerned about exposure in the event an alien terrorist not detained were to abscond or harm public safety. My response -- if these latter concerns were valid, we wouldn't have opposed the provision. Making tough individualized determinations is part of being in the Executive Branch. Congressional reaction will not necessarily be uniform -- a number of members of Congress have been very sympathetic to the Irish nationals under deportation for their terrorist activities before coming to the U.S.

Recommendation

That we inform DOJ that we support the narrow view.

Alternatively, that we inform DOJ that we support the broader view favored by INS and DOJ/Crim.

Alternativley, that we take no position.

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3300B403.FIN

MS Mail

6410

DATE-TIME 11 February 97 12:59
FROM Malley, Robert
CLASSIFICATION UNCLASSIFIED
SUBJECT Golden Venture [UNCLASSIFIED]
TO Danvers, William C.
Kreczko, Alan J.

CARBON_COPY Baker, James E.
Bendick, Gordon L.
Burrell, Christina L.
Davis, William K.
Hunerwadel, Joan S.
Letts, Kelly J.
Sparks, John E.

TEXT_BODY

Alan, Bill:

Please provide your suggestions/concurrence ASAP (need to get up before 3:00 pm)

Thanks

[[GOLDEN8.DOC : 3156 in GOLDEN8.DOC]]

ATTACHMENT
FILE DATE

11 February 97 12:53

ATTACHMENT
FILE NAME

GOLDEN8.DOC
0342
cc: Vice President
Chief of Staff

ACTION

MEMORANDUM FOR THE PRESIDENT

FROM: SAMUEL BERGER

COPY

SUBJECT: Golden Venture Detainees

Purpose

To decide whether to parole the Golden Venture detainees and place them under supervised release.

Background

Status of Golden Venture Detainees: A total of 55 migrants from the Golden Venture -- 52 men and 3 women -- currently remain in detention. (The decrease since our last memorandum is due to a combination of deportations to China and releases on various grounds.)

Their asylum claims were rejected by the immigration courts, and the Immigration and Naturalization Service (INS) subsequently found that they did not qualify under its humanitarian relief program for victims of -- or those threatened by -- coercive family planning.

Most of the detainees now have habeas claims in federal courts. In all but four cases, the claims are based on fear of coercive family planning practices.

Impact of Immigration Bill: At the time the migrants' claims were rejected by the immigration courts, fear of coercive family planning practices did not constitute a recognized basis for asylum. This has been changed by the recently enacted immigration bill. As a result of the legal modification, the INS has agreed that many of the asylum cases should be reconsidered under the terms of the new law. It also has released three migrants who presented the strongest claims. However, the INS has not agreed to the demand of the detainees' advocates and supporters that all migrants be released pending disposition of their cases. Press, congressional, and public interest has been rekindled by this change in the law. (Twenty-eight members of Congress have written urging release, including Reps.

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Goodling,
Gilman, Hyde, Smith, Berman, and Pelosi).

Discussion

Arguments in Favor of Maintaining in Detention (Option supported by the Departments of Justice and State and by the Coast Guard).

☐ Releasing the detainees could encourage future smuggling. Pursuant to PDD 9, an element of our strategy to deter smuggling has been to detain smuggled aliens until the end of their exclusion proceedings. Releasing the migrants could undermine this strategy, which has been largely successful. While the Golden Venture migrants have been detained for over three years, this is due to their repeated legal challenges; releasing them would encourage use of such tactics to soften the Administration's resolve.

☐ If released, a number of migrants are likely to flee in order to avoid deportation.

☐ The detainees are unlikely to prevail on their asylum claims. The INS already determined that the aliens remaining in detention did not qualify under its administrative relief program which was designed to protect persons with well-founded fears of return to coercive family planning practices. Most are therefore unlikely to be granted asylum when their cases are reheard by immigration courts under the new law.

Argument in Favor of Supervised Release

☐ The exceptional length of detention justifies a humanitarian response. Because of the complex legal issues raised in this case (which involved allegations of political interference that ultimately were rejected), the migrants have now spent over three and a half years in detention. This far exceeds the 62-day average time for similarly situated illegal aliens. Indeed, the INS is unaware of any other non-criminal alien currently in detention who has been held for over three years awaiting termination of his exclusion proceedings. (Some aliens have been held for over three years, but their legal claims have been resolved and their continued detention is due to their country of origin's refusal to take them back.)

☐ If not released, the migrants are likely to remain in detention

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5500B-105-1-111
for a significant amount of time. Because of the asylum provision in the immigration bill, the detainees will reopen their cases which once again will make their way before immigration judges, the Board of Immigration Appeals, and federal district courts if necessary -- a process that could take several months at a minimum.

☐ Releasing the migrants will not undermine our deterrence policy.

Much of the desired deterrent effect has been achieved by the prolonged detention period already undergone. More importantly, the expedited exclusion provisions of the new immigration bill provide us with long-sought ability to hasten the processing of illegal migrants by eliminating several avenues of legal appeal. Beginning April 1, 1997, illegal migrants will be processed in a matter of days. This change should more than outweigh any possible loss of deterrence due to the release of the 55 detainees.

☐ Precedent suggests that the detainees will not abscond if released. To date, over 40 Golden Venture detainees have been paroled on various grounds and placed under supervised release. INS reports that, unlike other Chinese migrants, all have been showing up for their court interviews. Advocates attribute this difference in behavior to the community bonds the Golden Venture detainees have established over time.

RECOMMENDATION

On balance, we believe there no longer exists a policy reason for maintaining the aliens in detention sufficient to outweigh our humanitarian concerns as our deterrence goals can be achieved by implementing the new expedited exclusion provisions. Therefore, we recommend that the detainees be released subject to reasonable conditions and pending final resolution of the deportation cases.

Approve _____

Disapprove _____

COPY

Withdrawal/Redaction Sheet

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. email	Kathleen-Cooper to Morton Halperin, re: [Phone Call] (9 pages)	05/23/1995	P1/b(1)
002. email	Peter Boynton to James Eisenhower and Elizabeth Verville re: Golden Venture (8 pages)	08/05/1996	P5 6411
003. email	Elizabeth Verville to Eric Schwartz and Steven Simon, re: [deportation case] (7 pages)	12/14/1995	P1/b(1), P5

COLLECTION:

Clinton Presidential Records
 NSC Emails
 MSMail - Non-Record (Sept 94 - Sept 97) ([Immigration and Naturalization])
 OA/Box Number: 605000

FOLDER TITLE:

[02/15/1995 - 08/05/1996]

2011-1044-F
 ke1380

RESTRICTION CODES

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

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

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

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

RR. Document will be reviewed upon request.

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

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

MS Mail

DATE-TIME 05 August 96 15:56
FROM Boynton, Peter J.
CLASSIFICATION UNCLASSIFIED
SUBJECT FW: Golden Venture [UNCLASSIFIED]
TO Eisenhower, James J.
Verville, Elizabeth G.
CARBON_COPY NO CC's on THIS MESSAGE
TEXT_BODY

From: Boynton, Peter J.
To: Malley, Robert
CC: /R, Record at A1
Subject: FW: Golden Venture [UNCLASSIFIED]
Date: Monday, August 05, 1996 03:56 PM

[[GOLDEN.DOC : 3851 in GOLDEN.DOC]]

Rob; i've made a few minor suggestions, and asked a couple questions in the text of your memo.

I agree with your assessment that the military base and halfway house options aren't attractive, for the reasons you outline in your memo. That leaves us with supervised release or removal to 3rd country, if we are compelled to do more than we are doing now.

As I understand it, the law mandates detention except in the circumstance where parole is strictly in the public interest. If we can't have reasonable assurance that supervised release won't result in alien flight, then how can we say that would be strictly in the public interest? I saw your comments re DOJ/INS view that the law enforcement benefit has already been derived from the detention to date - but I don't understand how they can draw that conclusion (please see my comment in the text of your memo). It seems to me that supervised release resulting in alien flight will erode the deterrent effect. If that is true, how can that be in the public interest?

If we must do something, couldn't we pursue removals to third countries while they remain in detention? (see my question re your assessment of this option in the text)

With respect to issue#2, it seems to me that it will be difficult and

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somewhat artificial to try and draw a line between those detained in York County and elsewhere; and similarly for those with a pending legal appeal the right to change their minds anytime prior to deportation makes it difficult to draw a distinction. If we can't make the distinction stick, then what's good for one group should serve the whole group for whichever option is chosen.

tk

From: Malley, Robert
To: Boynton, Peter J.; Danvers, William C.; Kreczko, Alan J.; Schwartz, Eric P.; Sestak, Joseph A.
CC: /R, Record at A1; @LEGISLAT-Legislative Affairs; @LEGAL - Legal Advisor
Subject: Golden Venture [UNCLASSIFIED]
Date: Friday, August 02, 1996 04:53 PM

Attached is a draft memo to the POTUS re. the Golden Venture detainees. As you will see, there is no recommendation yet.

My own personal view (though I am more than open to persuasion) is that we should release all the detainees (barring some unknown circumstances -- i.e., danger to the community) and place them with relatives or other responsible persons. We would not abandon efforts to deport them, and we would pursue at the same time third country resettlement options.

The reason I am leaning toward this option is that if we want to do something (and the POTUS certainly has suggested he does), then this is the only option that appears to make sense. Moving them to a military base or some other facility would barely improve their lot, and in fact would require moving them from York County where they enjoy a broad support network. As for extending the decision to all detainees (and not only those at York), I would be fearful of a legal challenge to a distinction for which I see no basis. Finally, we could limit the decision to those whose habeas petitions are still pending, but if we are willing to release 50, why not extend to the 20 others who in any event probably would change their minds and chose to resist deportation if they saw that we were changing their status.

Anyway, take a look and provide me with comments. Please get back to me by tuesday, as Sandy has asked me for this repeatedly

Thanks

ATTACHMENT
FILE DATE

5 August 96 14:50

ATTACHMENT

COPY

320067BAS.FIN

FILE NAME

GOLDEN.DOC

cc: Vice President
Chief of Staff

ACTION

MEMORANDUM FOR THE PRESIDENT

FROM: ANTHONY LAKE
JACK QUINN
CAROL RASCO
JOHN HILLEY

SUBJECT: Golden Venture Detainees

Purpose

To review current Administration policy concerning the detention of Chinese nationals from the Golden Venture.

Background

In a recent conversation with Representative Goodling, you suggested that you would review options to address the continued detention of 47 Chinese nationals in York County, Pennsylvania.

The Golden Venture

The 47 detainees in York County were among some 282 Chinese nationals who tried to enter the United States illegally in 1993 aboard the Golden Venture. The Golden Venture symbolized increased efforts of Chinese alien smugglers; Chinese nationals who were on the ship pledged as much as \$30,000 each to alien smugglers for passage. The aliens were placed in exclusion or deportation proceedings and many have raised asylum claims, in particular based on China's coercive family planning practices.

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Legal background

Under current law, coercive family practices generally are not grounds for asylum. However, pursuant to an administrative regime you approved in 1994, release from detention and protection from deportation may be provided asylum-seekers who have suffered severe mistreatment related to coercive family planning practices or who have well-founded fears of return to severe mistreatment. The Administration has indicated support for legislation currently before the Congress that would provide statute-based protection to those who are now afforded administrative relief. (However, the provisions are included in the immigration bill and other legislative proposals the Administration otherwise does not support.)

Status of Golden Venture migrants

To date, one hundred and three Golden Venture migrants have been deported to China. Thirty-four were granted asylum and have been released. Eleven have been resettled in third countries. Eight were granted humanitarian relief from deportation based on the administrative procedures described above. Forty-four were released on bond or (in the case of juveniles) placed in foster homes. (In addition, six drowned while attempting to reach our shores and six escaped custody.)

Therefore, a total of seventy Golden Venture migrants remain in detention; of these, twenty have abandoned their legal appeals and are awaiting deportation while fifty have pending habeas corpus petitions in federal court. Final resolution of their cases is not expected until the end of the year at the earliest.

The geographic breakdown is as follows: Forty-seven are at York County, of whom eleven have given up their appeals and thirty-six have pending habeas petitions. Seventeen are at Bakersfield (CA)

--
eight have given up their appeals and nine have pending petitions.

The rest are in New Orleans and Winchester (VA).

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INS detention policy

While U.S. law mandates the detention of persons who have attempted to enter our country without permission, the Immigration and Naturalization Service (INS) is authorized to parole such persons where it would be "strictly in the public interest." However, in order to deter future alien smuggling, the Administration strictly applied its detention policy to the Chinese migrants. DOJ, INS and the Coast Guard believe this detention policy has effectively discouraged alien smuggling from China.

Appeals from Congress and other groups

Twenty eight Representatives have written to urge the immediate release of the Golden Venture detainees. They include Representatives Goodling, Gilman, Hyde, Smith, Berman, and Pelosi.

Numerous advocacy groups have made the same request.

ISSUE #1: POSSIBLE COURSES OF ACTION

Option 1. Stay the course: maintain current detention.

DOJ, INS and the Coast Guard strongly recommend that we maintain the 70 aliens in detention pending resolution of their cases. They stress that all detainees have been determined not to be eligible for asylum and not to qualify for administrative relief. They also argue that our strict detention policy has succeeded in deterring this form of alien smuggling, important because detection of these vessels making open-ocean crossings is by no means assured, and when they are, interdiction is particularly expensive. Finally, any modification in status could convince detainees who have given up their legal appeals and are awaiting deportation to change their minds, which they can do until actual deportation.

Option 2. Soft Detention on a Military Base

The INS has placed detainees in "soft custody" on military bases in some circumstances, for example when minors at risk of harm have had to be detained. Military bases can be less expensive than private

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contracting facilities and provide more security. DoD recommends against this option, pointing to prior instances of violence caused by migrants detained on military bases (e.g., the experience of the Mariel Cubans). To address these issues, the aliens could be moved to a base that is in the process of closing and presently unoccupied. However, it is unclear whether moving the detainees to a military base would improve their lot given the broad support network they enjoy at York County, including legal assistance and English language classes.

Option 3. Soft Detention in Halfway Houses

Halfway houses have been used to hold aliens on prior occasions; they generally are run by non-governmental organizations or public contractors who are responsible for the education and medical care of the residents. DOJ and INS recommend against this option because of the high risk that the aliens might flee.

Option 4. Supervised Release

The INS has the ability to parole the detainees and seek to place them with relatives or other responsible persons. Detainees would be required to report regularly to a volunteer organization or public interest group and be subjected to a curfew. While this option would be applauded by advocacy groups and some on the Hill, DOJ and INS strongly oppose it, arguing that it is likely to result in the flight of a number of aliens and that release would undermine the legal position the government has taken since the outset of this case. Moreover, given the likelihood that the government ultimately will prevail in the habeas cases, they believe that trying to remove the migrants after they have been released would create a more visible and controversial issue. On the other hand, DOJ and INS recognize that releasing the detainees would not have a significant impact on our law enforcement objectives since much of the

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desired
 deterrent effect has been achieved by the long period of
 detention
 [Rob; I'm surprised to hear that DOJ and INS feel this way -
 could it
 not also be interpreted (by the smugglers/aliens) as a signal
 that
 the administration has changed policy, or if not changed, then
 can't
 sustain it's policy (eg detain long enough) and therefore
 encourage
 resumption of smuggling?.

Option 6: Removal to Third Countries [Rob, where's #5?]

An attorney representing some of the detainees has resettled ten
 of
 them as refugees in Ecuador and he is willing to continue his
 efforts. The U.S. also could d,marche countries of the region.
 While
 this option would meet both humanitarian and law enforcement
 objectives, prior experience suggests it will be difficult to
 find
 interested third countries, particularly within an acceptable
 timeframe [Rob, wasn't this prior experience with respect to
 large
 numbers of refugees? If so, would it hold true for a
 comparatively
 small number?]. This option could be pursued in conjunction with
 a
 decision to transfer or release the detainees.

ISSUE #2: DETAINEES AFFECTED BY DECISION

Any option other than maintaining the status quo will require
 deciding who among the Golden Venture detainees should benefit
 from
 the change in status. There are two questions:

1: Whether the decision should affect all Golden Venture detainees
 or only those in York County

The York County detainees are the only ones you discussed with
 Representative Goodling. However, it would be difficult to
 distinguish between these and other detainees, and some persons
 could
 choose to challenge such a distinction in court.

2. Whether the decision should reach all detainees or only those
 whose habeas proceedings are still underway

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Twenty of the seventy Golden Venture detainees have abandoned their legal appeals and are awaiting deportation. Therefore, a decision to transfer or release the detainees could be limited to those whose habeas petitions remain active and who face at least several additional months of detention. Such a limitation would be complicated by the fact that detainees who have abandoned their legal appeals can change their minds at any time prior to actual deportation. Were they to resist deportation, we would then have to decide whether to treat them in the same manner as those who had previously been transferred or released.

RECOMMENDATION

That [Enter recommendation text here]

That [Enter recommendation text here]

Approve _____

Disapprove _____ [Optional]

Attachment

Tab [I or A] [Enter brief description of attachment]

COPY

Withdrawal/Redaction Sheet

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. email	Scott Busby to Roseanne Hill, re: Action Memorandum for NSC (3 pages)	09/25/1997	P1/b(1)
002. email	Scott Busby to Jeffrey DeLaurentis, re: Package 6520 (4 pages)	09/25/1997	P1/b(1)
003. email	Scott Busby to Eric Schwartz re: POTUS Memo DED and Memo to AG (6 pages)	12/17/1997	P5 6412
004. email	Scott Busby to Eric Schwartz re: Revised Haiti Memo (6 pages)	12/17/1997	P5 6413
005. email	Karl Hofmann to Scott Busby re: Clearances Please (6 pages)	12/18/1997	P5 6414

COLLECTION:

Clinton Presidential Records
 NSC Emails
 Exchange - Record (Sept 97 - Jan 01) ([Immigration and Naturalization])
 OA/Box Number: 620000

FOLDER TITLE:

[09/25/1997 - 12/23/1997]

2011-1044-F

ke1382

RESTRICTION CODES

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

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

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

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

RR. Document will be reviewed upon request.

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

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

Exchange Mail

DATE-TIME 12/17/97 9:49:20 PM
FROM Busby, Scott W.
CLASSIFICATION UNCLASSIFIED
SUBJECT POTUS Memo on DED and Memo to AG [UNCLASSIFIED]
TO Schwartz, Eric P.

CARBON_COPY Letts, Kelly J.

TEXT_BODY Eric --

I need for you to review these as soon as possible. I've put hard copies on your chair. Need to get to Berger by the afternoon if possible. (We'd like for POTUS to sign before he goes to Bosnia on Sunday so that we can issue early next week.) Thanks.

TRANSLATED_ATTACHMENT

Haitians DED POTUS memo.doc

ACTION

MEMORANDUM FOR THE PRESIDENT

FROM: SAMUEL BERGER
BRUCE REED

SUBJECT: Deferred Enforced Departure (DED) for Certain Haitians
in the United
States

Purpose

To provide a temporary stay of deportation to certain Haitians in the
United

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States.

Background

During the final negotiations regarding the immigration legislation for Central

Americans, we pushed to provide similar relief to similarly situated Haitians.

As you know, those efforts were unsuccessful. But, in both a press statement and the signing statement regarding that legislation, you indicated that you

would seek legislative relief for certain Haitians in the next session of Congress. You also indicated that the Administration would undertake appropriate

administrative action to stay temporarily the deportation of those Haitians while

we pursued such legislative relief.

Since the enactment of the Central Americans legislation, the Department of

Justice and White House staff have explored appropriate administrative actions

that would fulfill your commitment on the latter issue. There are two primary

options. First, the Attorney General could grant a stay to Haitians covered by

the legislation on the basis of her prosecutorial discretion. In essence, the

Attorney General could decide that, based on the reasonable likelihood that

legislation benefiting these individuals would pass in the near future, it would

be an unwise use of the Department of Justice's resources to deport such

individuals while the legislation is pending.

The second option would be for you to direct the Attorney General and the

Immigration and Naturalization Service to grant deferred enforced departure (DED)

to a specified class of Haitians. DED is founded on your foreign policy powers.

In essence, it requires that you find that it is in the foreign policy interest

of the United States to delay temporarily the deportation of persons from a

particular country. President Bush was the first to order a grant of DED when he

did so in 1990 for Chinese nationals. He did so again in 1991 to

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residents of
Kuwait who were evacuated during the Gulf War and in 1992 to
Salvadorans who had
previously registered for Temporary Protected Status. In 1993, you
directed the
Attorney General to extend DED for Salvadorans until the end of
1994.

We believe that the better of the two options is for you to direct the
Attorney
General to grant DED. There are powerful foreign policy reasons for
doing so.
First, as you know, the situation in Haiti continues to be fragile,
particularly
with the withdrawal of multilateral forces on November 30. The
repatriation of
Haitians would only contribute to the problems that Haiti now faces.
Second, it
would deprive Haiti of the valuable remittances it receives from its
citizens in
the United States-one of its primary sources of foreign exchange.
Third, we have
devoted substantial military, political, and economic resources to
restoring
democracy and stability to Haiti. Deferring the return of Haitians who
fled
political violence represents one additional way of contributing to
these
developments. Fourth, President Preval wrote to you urging you to
support fair
treatment of Haitian nationals who have established ties in the United
States.
Given our firm commitments to helping democracy in Haiti, we have
a strong
interest in being responsive to his request, as well as in
communicating to him
and other foreign leaders that foreign nationals in the United States
will be
treated fairly and equitably.

We also believe that DED presents a more secure basis on which to
grant a
temporary stay of deportation to the Haitians than does the Attorney
General's
exercise of prosecutorial discretion in these circumstances. The
exercise of
prosecutorial discretion of the type described is permissible only so
long as
there is a reasonable likelihood of legislative success. While we
believe at

COPY

present that there is a solid chance that we can obtain legislative relief for the Haitians, that could change quickly given the controversy this legislative effort has already generated. We also think this approach may be subject to greater Congressional scrutiny than DED because there is less clear precedent for staying the enforcement of the immigration laws based on pending legislation. For these reasons, we think it unwise and potentially disadvantageous to our overall legislative effort to have the Attorney General issue a temporary stay based on her prosecutorial discretion.

The other issues for decision are the class of Haitians who would be eligible for DED and the length of time they would be granted DED. Because of the Administration's strong commitment to immigration enforcement, we do not believe, as some have suggested, that it would be appropriate to make eligible for DED all Haitians currently without status in the United States. (INS estimates that there are 105,000 such Haitians.) We recommend directing a grant of DED for one year to Haitians who were paroled into the United States prior to December 31, 1995 - this includes the so-called "Guantanamo Haitians" who were brought in by the Bush Administration in the wake of Aristide's ouster and certain others who were apprehended at the border and later granted parole - and Haitians who applied for asylum prior to that same date. (We think the December 31, 1995 cut-off date is appropriate because it is the date by which all Haitians who were at Guantanamo Bay Naval Base were either brought to the United States or returned. We also believe that it would encompass most Haitians who fled the military regime in Haiti and later applied for asylum.) This group is also consistent with the group identified by the legislation that has been introduced by Sen. Bob Graham and Rep. John Conyers. (The Immigration and Naturalization

COPY

Service estimates that this group is approximately 41,000 individuals.)

We believe that a one year grant of DED would permit us to push for legislative relief for Haitians throughout the full next session of Congress. If such efforts were unsuccessful, we could then make a decision about appropriate next steps before the next Congress, including whether to further extend DED for this group of Haitians. A longer grant of DED would take us beyond the next session of Congress.

RECOMMENDATION

That you sign the attached memorandum directing the Department of Justice to grant DED for one year to the group of Haitians described above.

Attachment
Tab I Memorandum for the Attorney General

2

cc: Vice President
Chief of Staff

TRANSLATED_ATTACHMENT Haitians Memo to the AG.doc

MEMORANDUM FOR THE ATTORNEY GENERAL

SUBJECT: Measures Regarding Certain Haitians in the United States

Over the past several decades, many Haitians have been forced to flee their country because of persecution and civil strife and have sought the protection of the United States. A significant number of these Haitians were

COPY

brought into the United States from Guantanamo Bay Naval Base by President Bush following the overthrow of President Aristide in 1991. Others arrived here and were paroled or applied for asylum. Many of these Haitians continue to be without legal status in the United States. I have determined that it is in the foreign policy interest of the United States to defer for one year the deportation of these persons.

Accordingly, I now direct you to take any steps necessary, pursuant to your authority under law, including the Immigration and Nationality Act, to provide to these Haitians:

1. deferral of enforced departure from the United States until [one year from date of signature]; and
2. authorization for employment until [one year from date of signature].

This directive shall apply to any Haitian national who was paroled into the United States before December 31, 1995 or who filed for asylum before December 31, 1995.

The directive shall not apply to (1) any Haitian national who has been convicted of an aggravated felony; (2) any Haitian national whom the Attorney General has reason to believe constitutes a threat to the community of the United States or presents a danger to national security; or (3) any Haitian national who voluntarily returns to Haiti or his or her country of last habitual residence outside the United States.

These measures should be taken today, [date of signature].

Exchange Mail

DATE-TIME 12/17/97 10:25:48 PM
FROM Busby, Scott W.
CLASSIFICATION UNCLASSIFIED
SUBJECT REVISED HAITI MEMO -- DISREGARD THE ONE BELOW
[UNCLASSIFIED]
TO Schwartz, Eric P.
CARBON_COPY Letts, Kelly J.
TEXT_BODY

Here's an effort at something tighter (but probably still too long). Disregard the last versions I sent to you.

TRANSLATED_ATTACHMENT

Haitians DED POTUS memo.doc

ACTION

MEMORANDUM FOR THE PRESIDENT

FROM: SAMUEL BERGER
BRUCE REED

SUBJECT: Deferred Enforced Departure (DED) for Certain Haitians
in the United
States

Purpose

To provide a temporary stay of deportation to certain Haitians in the
United
States.

Background

During the consideration of immigration legislation for Central
Americans this

COPY

fall, we pushed to provide similar relief to certain similarly situated Haitians.

As you know, those efforts were unsuccessful. Nevertheless, you indicated that you would seek legislative relief for certain Haitians in the next session of Congress. You also stated that the Administration would undertake appropriate administrative action while we pursued such legislative relief.

Since the enactment of the legislation for Central Americans, the Department of Justice and White House staff have explored appropriate administrative actions that would fulfill your commitment on the latter issue. There are two primary options. First, the Attorney General could exercise her prosecutorial discretion to stay the deportation of certain Haitians based on the reasonable likelihood that legislation benefiting these individuals would pass in the near future.

Second, you could direct the Attorney General and the Immigration and Naturalization Service to grant deferred enforced departure (DED) to a specified class of Haitians. A DED order requires that you find that it is in the foreign policy interest of the United States to delay temporarily the deportation of certain Haitians to their country.

We believe that the better of the two options is for you to direct the Attorney General to grant DED. There are powerful foreign policy reasons for doing so.

First, as you know, the situation in Haiti continues to be fragile, particularly with the withdrawal of multilateral forces on November 30. The repatriation of

Haitians would only contribute to the problems that Haiti now faces.

Second, it would deprive Haiti of the valuable remittances it receives from its citizens in the United States-one of its primary sources of foreign exchange.

Third, we have devoted substantial military, political, and economic resources to restoring

COPY

democracy and stability to Haiti. Deferring the return of certain Haitians is one additional way of contributing to these developments. Fourth, President Preval has urged you to support treatment for Haitian nationals equal to that provided to Central Americans. Given our firm commitment to bringing about democratic change in Haiti, we have a strong interest in responding favorably to his request, and in communicating to him and other foreign leaders that the United States will treat foreign nationals who are here fairly and equitably.

We also believe that DED presents a more secure basis on which to grant a temporary stay of deportation to these Haitians than does the Attorney General's exercise of prosecutorial discretion in these circumstances. The exercise of prosecutorial discretion of the type described is permissible only so long as there is a reasonable likelihood of legislative success. While we believe at present that there is a solid chance that we can obtain legislative relief for the Haitians, that could change quickly given the controversy this legislative effort has already generated. This, in turn, would warrant an end to any stay based on prosecutorial discretion. We also think this approach may be subject to greater Congressional scrutiny than DED because there is less clear precedent for staying the enforcement of the immigration laws based on pending legislation. For these reasons, we think it unwise and potentially disadvantageous to our overall legislative effort to have the Attorney General issue a temporary stay based on her prosecutorial discretion.

The other issues for decision are the size of the group of Haitians who would be eligible for DED and the length of time they would be granted DED. Because of the Administration's strong commitment to immigration enforcement, we do not believe, as some have suggested, that it would be appropriate to make

COPY

eligible
for DED all Haitians currently without status in the United States
(approximately
105,000 persons). Instead, we recommend directing a grant of DED
for one year to
Haitians who were paroled into the United States prior to December
31, 1995 -
this includes the so-called "Guantanamo Haitians" who were brought
in by the Bush
Administration in the wake of Aristide's ouster and certain others who
were
apprehended at the border and later granted parole - and Haitians who
applied for
asylum prior to that same date. (We think the December 31, 1995 cut-
off date is
appropriate because it covers all Haitians who were brought from
Guantanamo Bay
Naval Base and most who fled the military regime in Haiti and later
applied for
asylum.) This group is also consistent with the group identified by the
legislation that has been introduced by Sen. Bob Graham and Rep.
John Conyers
(approximately 41,000 individuals). Excluded from the group would
be certain
criminals, persons who constitute a threat to the community of the
United States
or who pose a danger to national security, and persons who have
voluntarily
returned to Haiti or another country of last habitual residence.

We believe that a one year grant of DED would permit us to push for
legislative
relief for Haitians throughout the full next session of Congress. If such

efforts were unsuccessful, we could then make a decision about
appropriate next
steps before the next Congress, including whether to further extend
DED for this
group of Haitians. A longer grant of DED would take us beyond the
next session
of Congress.

RECOMMENDATION

That you sign the attached memorandum directing the Department of
Justice to
grant DED for one year to the group of Haitians described above.

COPY

Attachment
Tab I Memorandum for the Attorney General

3

cc: Vice President
Chief of Staff

TRANSLATED_ATTACHMENT Haitians DED Memo to the AG.doc

MEMORANDUM FOR THE ATTORNEY GENERAL

SUBJECT: Measures Regarding Certain Haitians in the United States

Over the past several decades, many Haitians have been forced to flee their country because of persecution and civil strife and have sought the protection of the United States. A significant number of these Haitians were brought into the United States from Guantanamo Bay Naval Base by President Bush following the overthrow of President Aristide in 1991. Others arrived here and were paroled or applied for asylum. Many of these Haitians continue to be without legal status in the United States. I have determined that it is in the foreign policy interest of the United States to defer for one year the deportation of these persons.

Accordingly, I now direct you to take any steps necessary, pursuant to your authority under law, including the Immigration and Nationality Act, to provide to these Haitians:

1. deferral of enforced departure from the United States until [one year from date of signature]; and

COPY

2. authorization for employment until [one year from date of signature].

This directive shall apply to any Haitian national who was paroled into the United States before December 31, 1995 or who filed for asylum before December 31, 1995.

The directive shall not apply to (1) any Haitian national who has been convicted of an aggravated felony; (2) any Haitian national whom the Attorney General has reason to believe constitutes a threat to the community of the United States or presents a danger to national security; or (3) any Haitian national who voluntarily returns to Haiti or his or her country of last habitual residence outside the United States.

These measures should be taken today, [date of signature].

Exchange Mail

DATE-TIME 12/18/97 6:25:02 PM
FROM Hofmann, Karl W.
CLASSIFICATION UNCLASSIFIED
SUBJECT FW: Clearances Please!: POTUS Memo on Haitians
[UNCLASSIFIED]
TO Busby, Scott W.

CARBON_COPY Rudman, Mara E.

TEXT_BODY

Scott, I fiddled a bit with your memo to POTUS.

-----Original

Message-----

From: Busby, Scott W.

Sent: Thursday, December 18,
1997 4:51 PM

To: Hofmann, Karl W.; Rudman, Mara E.; Baker, James
E.

Cc: @INTERAM - Inter-American; @LEGISLAT - Legislative
Affairs;

@LEGAL - Legal Advisor

Subject: Clearances Please!: POTUS Memo
on Haitians [UNCLASSIFIED]

Need your clearances please by COB
today.

To Legal: I have spoken to Justice about the form
of the direction they would like. Their preliminary view at present
is that they would like a written memo of this sort with a clear
identification of the class of people covered and clear articulation
of the President's finding that it's in the foreign policy interest
of the United States to do this. However, we want to make sure that
doing this in writing does not in any way compromise the President's
authority to do this sort of thing.

TRANSLATED_ATTACHMENT

Haitians DED BERGER memo.doc

COPY

December 18, 1997

ACTION

MEMORANDUM FOR SAMUEL R. BERGER

THROUGH: ERIC SCHWARTZ

FROM: SCOTT BUSBY

SUBJECT: Deferred Enforced Departure for Certain Haitians

Attached is a decision memorandum to the President on the above subject.

Concurrence by: Karl Hofmann; Mara Rudman; Jamie Baker

RECOMMENDATION

That you forward the attached memorandum to the President.

Attachment

Tab I Memorandum to the President

Tab A Memorandum to the Attorney General

1

TRANSLATED_ATTACHMENT Haitians DED POTUS memo.doc

ACTION

MEMORANDUM FOR THE PRESIDENT

FROM: SAMUEL BERGER
BRUCE REED

SUBJECT: Deferred Enforced Departure (DED) for Certain Haitians
in the United

COPY

54B51A04.FIN
States

Purpose

To provide a stay of deportation to certain Haitians.

Background

During the consideration of immigration legislation for Central Americans this fall, we urged relief to similarly situated Haitians, but those efforts were unsuccessful. You subsequently stated that you would seek legislative relief for the Haitians and, in the meantime, that we would take appropriate administrative action for these individuals.

Interim Action: Deferred Enforced Departure: We recommend that you now direct the Attorney General and the Immigration and Naturalization Service to grant deferred enforced departure (DED) to this group - comprised primarily of those who fled Haiti after the 1991 coup. Justice concurs in this recommendation, which requires that you find that it is in the foreign policy interest of the United States to do so.

In addition to fairness and equity, there are powerful foreign policy reasons for granting DED to this group. The situation in Haiti remains fragile, and the repatriation of these Haitians could increase the economic and social problems that Haiti now faces. It would also deprive Haiti of valuable remittances - one of its primary sources of foreign exchange in the country's current depressed economic state.

Alternative to DED: In lieu of DED, we did consider recommending that the Attorney General exercise her prosecutorial discretion to stay the deportation of these Haitians based on the reasonable likelihood that legislation benefiting them would soon be adopted. However, we do not recommend such an approach, given

COPY

the uncertain prospects for the legislation and our belief that such action by the Attorney General would be subject to greater congressional scrutiny and opposition than DED.

Size of the Group: We recommend directing a grant of DED for one year to

Haitians who were paroled into the United States prior to December 31, 1995 -

this includes the so-called "Guantanamo Haitians" who were brought in by the Bush

Administration in the wake of Aristide's ouster and certain others who were

apprehended at the border and later granted parole - and Haitians who applied for

asylum prior to that same date (approximately 40,000 individuals).

Excluded

would be certain criminals as well as persons who pose a danger to the United

States. This group is identical to that included in legislation introduced by

Sen. Bob Graham and Rep. John Conyers.

If, during the one-year grant of DED, our effort to seek legislative relief is

unsuccessful, we can then make a decision about appropriate next steps.

RECOMMENDATION

That you sign the attached memorandum directing the Attorney General to grant DED

for one year to the group of Haitians described therein.

Attachments

Tab I Memorandum to the Attorney General

cc: Vice President
Chief of Staff

MEMORANDUM FOR THE ATTORNEY GENERAL

SUBJECT: Measures Regarding Certain Haitians in the United States

Over the past several decades, many Haitians have been forced to flee their country because of persecution and civil strife and have sought the protection of the United States. A significant number of these Haitians were brought into the United States from Guantanamo Bay Naval Base by President Bush following the overthrow of President Aristide in 1991. Others arrived here and were paroled or applied for asylum. Many of these Haitians continue to be without legal status in the United States. I have determined that it is in the foreign policy interest of the United States to defer for one year the deportation of these persons.

Accordingly, I now direct you to take any steps necessary to provide to these Haitians:

1. deferral of enforced departure from the United States until [one year from date of signature]; and
2. authorization for employment until [one year from date of signature].

This directive shall apply to any Haitian national who was paroled into the United States before December 31, 1995 or who filed for asylum before December 31, 1995.

The directive shall not apply to (1) any Haitian national who has been convicted of an aggravated felony; (2) any Haitian national whom the Attorney General has reason to believe constitutes a threat to the community of the United States or presents a danger to national security; or (3) any Haitian national who voluntarily returns to Haiti or his or her country of last habitual

COPY

34B51A04-1111

residence
outside the United States.

These measures should be taken today, [date of signature].

Withdrawal/Redaction Sheet

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. email	Newell Highsmith to Jane Fort, re: [case] (5 pages)	01/28/1998	P6/b(6)
002. email	Joan Hunerwadel to Scott Busby and Jane Fort, re: Reply to Vance Hartke (4 pages)	02/03/1998	P6/b(6)
003. email	Scott Busby to Eric Schwartz, re: [revised memo] (5 pages)	02/13/1998	P1/b(1)
004. email	Charles Allen to James Baker, et al., re: [Burden-sharing] (7 pages)	05/22/1998	P1/b(1)
005. email	James Gagnon to Scott Busby et al re: Response to Chris Smith (5 pages)	05/25/1998	P5 6415

COLLECTION:

Clinton Presidential Records
 NSC Emails
 Exchange - Record (Sept 97 - Jan 01) ([Immigration and Naturalization])
 OA/Box Number: 620000

FOLDER TITLE:

[01/09/1998 - 05/25/1998]

2011-1044-F

ke1383

RESTRICTION CODES

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

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

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

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

RR. Document will be reviewed upon request.

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

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

6415

Exchange Mail

DATE-TIME 5/25/98 12:14:16 PM
FROM Gagnon, James M.
CLASSIFICATION UNCLASSIFIED
SUBJECT FW: Response to Chris Smith [UNCLASSIFIED]

TO Busby, Scott W.
Busby, Scott W.
Kale, Dora A.
Malley, Robert
Naplan, Steven J.
Ragan, Richard F.
Schwartz, Eric P.
Williams, Mary C.
Abercrombie-Winstanley, Gina K.
Burrell, Christina L.
Farrar, Jay C.
Rudman, Mara E.
Rudman, Mara E.
Farrar, Jay C.
Allen, Charles A.
Baker, James E.
DeRosa, Mary B.
Highsmith, Newell L.
Hunerwadel, Joan S.
DeRosa, Mary B.

CARBON_COPY Albert, Ronda A.
Bader, Jeffrey A.
Gagnon, James M.
Green, James B.
Kristoff, Sandra J.
Pritchard, Charles (Jack) L.

TEXT_BODY SB: Thanks for addressing this. On the Bells of Balangiga, the shared solution is either dead or on life support for the moment. The issue, although Philippine in nature, has become a Leg Affairs/domestic political issue. I have made some suggested changes. But they will have to pass muster with MRudman and JFarrar both of whom know this issue all too well. JGagnon

-----Original Message-----
From: Busby,

COPY

Scott W.
Sent: Monday, May 25, 1998 10:28 AM
To: Gagnon, James
M.
Subject: Response to Chris Smith [UNCLASSIFIED]

Jim -- Hate
to burden you with an extraneous matter on this Memorial Day but
I have just worked up a response (at long last) to Chris Smith and
would love to get your input. THanks and hope you don't have to
be here for too long. Scott

TRANSLATED_ATTACHMENT 2744 BERGER memo.doc

May 25, 1998

ACTION

MEMORANDUM FOR SAMUEL R. BERGER

THROUGH: ERIC SCHWARTZ

FROM: SCOTT BUSBY

SUBJECT: Issues with the Philippines

Attached is a memorandum to the President and a proposed response
to a letter
from Representative Christopher Smith.

This response has been delayed by our efforts to obtain relevant
information from
the Department of State regarding the immigration issues raised in the
letter.

Concurrence by: Jim Gagnon, Gina Abercrombie-Winstanley, Charles
Allen

RECOMMENDATION

That you sign the attached memorandum.

Attachment
Tab I Memorandum to the President
Tab A Letter to Representative Smith

COPY

Tab B Incoming Correspondence

1

2744

TRANSLATED_ATTACHMENT 2744 POTUS memo.doc

ACTION

MEMORANDUM FOR THE PRESIDENT

FROM: SAMUEL BERGER
LARRY STEIN

SUBJECT: Issues with the Philippines

Purpose

To respond to a letter from Representative Christopher Smith on several bilateral issues with the Government of the Philippines.

Background

Representative Smith requests that you help return to the Philippines the Bells of Balangiga, two church bells we brought to the United States in 1904. He also urges you to resolve the cases of Vietnamese "long-stayers," who we brought to the Philippines but have been deemed inadmissible to the United States, and to facilitate the issuance of U.S. visas to other Vietnamese in the Philippines.

Your response indicates we are working on a solution to the Bells of Balangiga issue.

Regarding the "long-stayers," you note that a recent review of these cases by U.S. agencies failed to find grounds on which these individuals could

COPY

be admitted
to the United States. Finally, you note that we will continue to
facilitate the
expeditious processing of U.S. visas for persons of all nationalities
who are in
the Philippines.

RECOMMENDATION

That you sign the attached response.

Attachments

Tab A Letter to Representative Smith
Tab B Incoming Correspondence

2

2744

cc: Vice President
Chief of Staff

TRANSLATED_ATTACHMENT 2744 Smith response.doc

Dear Mr. Smith:

Thank you for your letter regarding the visit of President Ramos of the
Philippines.

You mention the cases of the Vietnamese "long-stayers." As you
know, these
individuals were determined to be inadmissible to the United States
after they
arrived in the Philippines. In 1997, the Department of State,
Immigration and
Naturalization Service and Center for Disease Control consulted at

COPY

great length
to see whether any of these individuals might have overcome the
grounds for their
inadmissibility. The agencies did not find any who had. We stand
prepared to
evaluate further these conclusions should any new and authoritative
information
become available.

Regarding the processing of visas in Manila, as you note, we lifted the
restrictions on immigrant visa issuance for Vietnamese asylum
seekers in July
1997. These cases are now treated in the same way that any other visa
petition
would be. This should ensure that those Vietnamese nationals with
qualifying
relatives in the United States are able to immigrate here as
expeditiously as the
law permits.

I appreciate your views on the Bells of Balangiga. We are trying to
work out a
solution that would take into account the equities of both American
veterans and
the Philippines.

Thank you again for raising these issues with me.

Sincerely,

The Honorable Christopher Smith
House of Representatives
Washington, D.C. 20515

Withdrawal/Redaction Sheet

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. email	Charles Allen to Scott Busby, re: [Burden-sharing] (8 pages)	06/11/1998	P1/b(1)
002. email	Robert Ford to Bryan Bartsch, re: WHSR Log 3 Aug 98 (4 pages)	08/13/1998	P1/b(1)
003. email	Scott Busby to Dora Kale re: POTUS Memo on Immigration Policy (5 pages)	12/09/1998	P5 6416
004. email	Edward Rice to Charles Allen et al re: Package 8162 (7 pages)	12/09/1998	P5 6417
005. email	Edward Rice to Keirn Brown et al re: Package 8162 (7 pages)	12/09/1998	P5 6418
006. email	Laurel Miller to Gerard Gallucci, re: [Migration Strategy] (9 pages)	12/28/1998	P1/b(1)

COLLECTION:

Clinton Presidential Records
 NSC Emails
 Exchange - Record (Sept 97 - Jan 01) ([Immigration and Naturalization])
 OA/Box Number: 620000

FOLDER TITLE:

[06/11/1998 - 12/28/1998]

2011-1044-F

kel384

RESTRICTION CODES

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

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

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

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

RR. Document will be reviewed upon request.

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

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

6416

Exchange Mail

DATE-TIME 12/9/98 8:32:55 AM
FROM Busby, Scott W.
CLASSIFICATION UNCLASSIFIED
SUBJECT FW: POTUS Memo on Immigration Policy for Central Americans
[UNCLASSIFIED]
TO Kale, Dora A.

CARBON_COPY

TEXT_BODY

Dora -- Please prepare (get number) and then double dot.

-----Original

Message-----

From: Busby, Scott W.

Sent: Tuesday, December 08,
1998 8:01 PM

To: @NSA - Natl Security Advisor

Cc: @INTERAM - Inter-American;

@MULTILAT - Multilateral and Humanitarian Affairs

Subject: POTUS

Memo on Immigration Policy for Central Americans

[UNCLASSIFIED]

Nina -- Please print out for Jim. Jim or Sandy's clearance needed
first thing in a.m.

This memo was requested by Maria E. It was
drafted by DPC and then was cleared by Multi and Interam here at
NSC. It has since gone up DPC chain of command and now sits with
Maria. Maria wants to get it ASAP to POTUS.

TRANSLATED_ATTACHMENT

Central Americans Immigration.doc
MEMORANDUM FOR THE PRESIDENT

COPY

FROM: MARIA ECHAVESTE
SANDY BERGER
BRUCE REED

RE: IMMIGRATION RESPONSE TO HURRICANE MITCH

In the wake of Hurricane Mitch, one of the key issues raised by both the Presidents of Central America and many immigration advocacy groups is what to do about Central Americans who are without legal status in the United States. In early November, the Immigration and Naturalization Service (INS) temporarily stayed removals of all nationals from Honduras, Nicaragua, El Salvador, and Guatemala. At your request, the INS then extended that delay until January 7, 1999. The long-term economic devastation and social destruction left by Hurricane Mitch, however, requires a more systematic approach to the treatment of those individuals. This memorandum sets out a proposed course of action.

Temporary Protected Status

As you know, the Attorney General has authority to grant Temporary Protected Status (TPS) for 6 to 18 months to nationals of a country if she finds that there has been an environmental disaster in that country that renders it temporarily unable to handle the return of its nationals. Persons who qualify for TPS are not subject to removal and are eligible for permission to work in the United States during the time period designated by the Attorney General.

The Department of State has evaluated conditions in Central America and recommends that the Attorney General grant TPS to nationals from Honduras and Nicaragua. The Department of Justice (DOJ) agrees that TPS would be appropriate for nationals of these countries. We recommend that the Attorney General grant TPS to nationals from Honduras and Nicaragua for a period of one year. At the

COPY

end of that one year period; the designation could be renewed.

The Department of State does not recommend TPS for nationals from El Salvador and Guatemala. The Department has concluded that the effect of Hurricane Mitch in these two countries is insufficient to warrant a TPS designation. More than 90 percent of the deaths and displacement caused by Mitch occurred in Honduras and Nicaragua. Moreover, while the economic and infrastructure damage in El Salvador and Guatemala has been serious, it is not severe enough to meet the TPS standard.

Alternative Relief for El Salvador and Guatemala

Because Mitch had serious effects on El Salvador and Guatemala and because we are interested in providing a coordinated response to all four affected countries, we believe we must also address the circumstances of Salvadorans and Guatemalans in the United States.

As you recall, the Nicaraguan Adjustment and Central American Relief Act (NACARA), enacted in late 1997, authorized virtually automatic permanent status for Nicaraguans and Cubans living in the United States, while providing Salvadorans and Guatemalans with only an opportunity to be considered under the more lenient (pre-1996 Act) rules for suspension of deportation (a form of immigration relief leading to permanent status). Hondurans were excluded altogether from this legislation. In your signing statement to the NACARA legislation, you noted that the Administration would seek to overcome disparities created by the legislation through the implementation process. In line with this statement, DOJ has recently proposed regulations that would greatly improve the chances for Salvadorans and Guatemalans seeking to obtain permanent status. The regulations, however, still do not provide the kind of guarantee of

COPY

permanent status enjoyed by Nicaraguans and Cubans. And although DOJ has committed to ensuring that immigration officers take the effects of Mitch into account when adjudicating suspension claims under NACARA, even this special consideration would provide no assurance that a Salvadoran or Guatemalan with a meritorious claim would obtain permanent status.

During the last session of Congress, Rep. Gutierrez sponsored legislation that would have provided amnesty to Salvadorans, Guatemalans, and Hondurans equivalent to that obtained by the Nicaraguans and Cubans in NACARA. We did not support that legislation because we have generally not favored grants of amnesty. However, given (1) that similarly situated Haitians were granted amnesty in the last session, and (2) the changed circumstances brought on by Hurricane Mitch, we recommend that we now commit to working with Congress to pass legislation that provides amnesty for Salvadorans and Guatemalans covered by NACARA, as well as a small group of similarly situated Hondurans. Though legislation of this kind would not provide relief for all nationals of El Salvador and Guatemala living in the United States, it would help a significant number -- approximately 300,000 out of an estimated 500,000 -- and would be consistent with your commitment to achieving parity for all similarly situated individuals covered by NACARA.

In addition to seeking parity through legislation, we also recommend that we seek Deferred Enforced Departure (DED) to those covered by the proposed legislation. This would help allay the perception that Salvadorans and Guatemalans are receiving second-class treatment in our immigration policy response to Mitch, and would ensure that individuals are not subject to deportation while we seek permanent relief for them. As you recall, we granted DED to Haitians in December

COPY

1997 under similar circumstances.

Timing

Because we recommend a TPS designation for nationals of only two of the four Central American countries affected by Mitch, we strongly recommend delaying this announcement until after the visit by the four Central American presidents at the end of this week. We also recommend that when we do make the TPS announcement, we put it in the context of the broader relief that we are providing to people from the region. Finally, we strongly recommend delaying announcing our intention to seek parity legislation, and the related DED announcement, until after we have had more of an opportunity to consult with the Hill. We have received indications that some members, including some key Republican members, may also be interested in pursuing legislative relief for Salvadorans and Guatemalans; a premature announcement of our intention to seek parity legislation might prejudice our chances of enacting the legislation.

6417

Exchange Mail

DATE-TIME 12/9/98 11:19:48 AM
FROM Rice, Edward A.
CLASSIFICATION UNCLASSIFIED
SUBJECT FW: Package 8162: Central Americans [UNCLASSIFIED]
TO Allen, Charles A.
Baker, James E.
DeRosa, Mary B.
Highsmith, Newell L.
Hunerwadel, Joan S.
Russ, Judith P.

CARBON_COPY Brown, Keirn C.
Davies, Glyn T.
Dejban, Donna D.
Hachigian, Nina L.
Kerrick, Donald L.
Millison, Cathy L.
Moretz, Sheila K.
O'Brien, Penelope R.
Rice, Edward A.
Scott-Perez, Marilyn L.
Storey, Sharon V.
Sutphen, Mona K.
Bernard, Kenneth W.
Busby, Scott W.
Denniston, Richard L.
Guarnieri, Valerie N.
Hawley, Leonard R.
Hill, Roseanne M.
Kale, Dora A.
Malley, Robert
Moller, Catherine A.
Naplan, Steven J.
Schwartz, Eric P.
Wippman, David

TEXT_BODY Latest version.

-----Original Message-----

From: Busby, Scott
W.

Sent: Wednesday, December 09, 1998 11:04 AM

COPY

To: @NSA - Natl
Security Advisor
Cc: @MULTILAT - Multilateral and Humanitarian
Affairs; @INTERAM - Inter-American; @LEGISLAT - Legislative
Affairs;
@EXECSEC - Executive Secretary
Subject: FW: Package 8162: Central
Americans [UNCLASSIFIED]

Revised per Nina's suggestions.

-----Original
Message-----

From: Busby, Scott W.
Sent: Wednesday, December 09,
1998 10:02 AM
To: @NSA - Natl Security Advisor
Cc: @EXECSEC - Executive
Secretary; @MULTILAT - Multilateral and Humanitarian Affairs;
@LEGISLAT
- Legislative Affairs; @INTERAM - Inter-American
Subject: Package
8162: Central Americans [UNCLASSIFIED]

Nina -- Please pass
this revised memo ASAP plus note to Jim.

Jim --

I think the
attached changes address the questions you raised about the memo.

First,
you asked how the recently proposed DoJ regs "greatly improve the
chances of Salvadorans and Guatemalans to gain permanent status."
In essence, DoJ has added an additional layer of more sympathetic
adjudicators to the decisionmaking process. In addition, it has codified

in regulation the standards applicable to these claims (such standards
had formerly only been in case law).

Second, you asked about the
Salvadorans and Guatemalans covered by NACARA (who would
benefit
from any amnesty legislation we would propose). I've addressed this
by describing more specifically the classes of folks covered by
NACARA
earlier in the memo.

COPY

Last, I've added some changes to the end of the memo clarifying that we would announce all of these provisions

(TPS, parity legislation and DED) together but not until after we've had a chance to consult with the Hill..

TRANSLATED_ATTACHMENT 8261POTUSMemo.doc

INFORMATION

MEMORANDUM FOR THE PRESIDENT

FROM: MARIA ECHAVESTE
SAMUEL BERGER
BRUCE REED

SUBJECT: Immigration Response to Hurricane Mitch

In the wake of Hurricane Mitch, one of the key issues raised by both the Presidents of Central America and many immigration advocacy groups is what to do about Central Americans who are without legal status in the United States. In early November, the Immigration and Naturalization Service (INS) temporarily stayed removals of all nationals from Honduras, Nicaragua, El Salvador, and Guatemala. At your request, the INS then extended that delay until January 7, 1999. The long-term economic devastation and social destruction left by Hurricane Mitch, however, requires a more systematic approach to the treatment of those individuals. This memorandum sets out a proposed course of action.

Temporary Protected Status

As you know, the Attorney General has authority to grant Temporary Protected

COPY

Status (TPS) for 6 to 18 months to nationals of a country if she finds that there has been an environmental disaster in that country that renders it temporarily unable to handle the return of its nationals. Persons who qualify for TPS are not subject to removal and are eligible for permission to work in the United States during the time period designated by the Attorney General.

The Department of State has evaluated conditions in Central America and recommends that the Attorney General grant TPS to nationals from Honduras and Nicaragua. The Department of Justice (DOJ) agrees that TPS would be appropriate for nationals of these countries. We recommend that the Attorney General grant TPS to nationals from Honduras and Nicaragua for a period of one year. At the end of that one year period, the designation could be renewed.

The Department of State does not recommend TPS for nationals from El Salvador and Guatemala. The Department has concluded that the effect of Hurricane Mitch in these two countries is insufficient to warrant a TPS designation. More than 90 percent of the deaths and displacement caused by Mitch occurred in Honduras and Nicaragua. Moreover, while the economic and infrastructure damage in El Salvador and Guatemala has been serious, it is not severe enough to meet the TPS standard.

Alternative Relief for El Salvador and Guatemala

Because Mitch had serious effects on El Salvador and Guatemala and because we are interested in providing a coordinated response to all four affected countries, we believe we must also address the circumstances of Salvadorans and Guatemalans in the United States.

As you recall, the Nicaraguan Adjustment and Central American Relief Act (NACARA), enacted in late 1997, authorized virtually automatic permanent status

COPY

for Nicaraguans and Cubans living in the United States since December 1995, while providing those Salvadorans and Guatemalans who applied for asylum prior to 1992 with only an opportunity to be considered under the more lenient (pre-1996 Act) rules for suspension of deportation (a form of immigration relief leading to permanent status). Hondurans were excluded altogether from this legislation. In your signing statement to the NACARA legislation, you noted that the

Administration would seek to overcome disparities created by the legislation through the implementation process. In line with this statement, DOJ has recently proposed regulations that would greatly improve the chances for Salvadorans and Guatemalans seeking to obtain permanent status by affording them an additional non-adversarial hearing before an INS officer and codifying the legal standard applicable to their claims. The regulations, however, still do not provide the kind of guarantee of permanent status enjoyed by Nicaraguans and Cubans. And although DOJ has committed to ensuring that immigration officers take the effects of Mitch into account when adjudicating suspension claims under NACARA, even this special consideration would provide no assurance that a Salvadoran or Guatemalan with a meritorious claim would obtain permanent status.

During the last session of Congress, Rep. Gutierrez sponsored legislation that would have provided amnesty to Salvadorans, Guatemalans, and Hondurans equivalent to that obtained by the Nicaraguans and Cubans in NACARA. We did not support that legislation because we have generally not favored grants of amnesty. However, given (1) that similarly situated Haitians were granted amnesty in the last session, and (2) the changed circumstances brought on by Hurricane Mitch, we recommend that we now commit to working with Congress to pass legislation that

COPY

provides amnesty for Salvadorans and Guatemalans covered by NACARA, as well as a small group of similarly situated Hondurans. Though legislation of this kind would not provide relief for all nationals of El Salvador and Guatemala living in the United States, it would help a significant number -- approximately 300,000 out of an estimated 500,000 -- and would be consistent with your commitment to achieving parity for all similarly situated individuals covered by NACARA.

In addition to seeking parity through legislation, we also recommend that we seek Deferred Enforced Departure (DED) to those covered by the proposed legislation. This would help allay the perception that Salvadorans and Guatemalans are receiving second-class treatment in our immigration policy response to Mitch, and would ensure that individuals are not subject to deportation while we seek permanent relief for them. As you recall, we granted DED to Haitians in December 1997 under similar circumstances.

Timing

Because we recommend a TPS designation for nationals of only two of the four Central American countries affected by Mitch, we strongly recommend delaying this announcement until after the visit by the four Central American presidents at the end of this week. We also recommend that when we do make the TPS announcement, we put it in the context of the broader relief that we are providing to people from the region, specifically our intention to seek parity legislation and to grant DED to the individuals covered by such legislation. We also believe we should hold off on making any such announcement until after we have had more of an opportunity to consult with the Hill. We have received indications that some members, including some key Republican members, may also be interested in pursuing legislative relief for Salvadorans and Guatemalans; a

COPY

premature
announcement of our intention to seek parity legislation might
prejudice our
chances of enacting the legislation.

2

8261

cc: Vice President
Chief of Staff

COPY

6418

Exchange Mail

DATE-TIME 12/9/98 3:47:04 PM
FROM Rice, Edward A.
CLASSIFICATION UNCLASSIFIED
SUBJECT FW: Package 8162: Central Americans [UNCLASSIFIED]
TO

Brown, Keirn C.
Davies, Glyn T.
Dejban, Donna D.
Hachigian, Nina L.
Kerrick, Donald L.
Millison, Cathy L.
Moretz, Sheila K.
O'Brien, Penelope R.
Rice, Edward A.
Scott-Perez, Marilyn L.
Storey, Sharon V.
Sutphen, Mona K.

CARBON_COPY

TEXT_BODY

Nina - Hard copy on its way.

-----Original Message-----

From: Allen,
Charles A.
Sent: Wednesday, December 09, 1998 3:42 PM
To: Rice,
Edward A.
Cc: Busby, Scott W.; @LEGAL - Legal Advisor; @MULTILAT
- Multilateral and Humanitarian Affairs
Subject: FW: Package 8162:
Central Americans [UNCLASSIFIED]
Importance: High

Ed, Legal clears
with the changes reflected in the memo. In addition to our legal
clearance, Scott Busby indicates that he received Justice's policy
clearance in substance.

-----Original Message-----

From: Busby,
Scott W.
Sent: Wednesday, December 09, 1998 10:02 AM
To: @NSA

COPY

- Natl Security Advisor
Cc: @EXECSEC - Executive Secretary; @MULTILAT
- Multilateral and Humanitarian Affairs; @LEGISLAT - Legislative
Affairs; @INTERAM - Inter-American
Subject: Package 8162: Central
Americans [UNCLASSIFIED]

Nina -- Please pass this revised
memo ASAP plus note to Jim.

Jim --

I think the attached changes
address the questions you raised about the memo.

First, you asked
how the recently proposed DoJ regs "greatly improve the chances of
Salvadorans and Guatemalans to gain permanent status." In essence,
DoJ has added an additional layer of more sympathetic adjudicators
to the decisionmaking process. In addition, it has codified in
regulation
the standards applicable to these claims (such standards had formerly
only been in case law).

Second, you asked about the Salvadorans
and Guatemalans covered by NACARA (who would benefit from any
amnesty
legislation we would propose). I've addressed this by describing
more specifically the classes of folks covered by NACARA earlier
in the memo.

Last, I've added a line to the end of the memo explaining
why the announcement of our TPS decision should be accompanied
by
an announcement of other measures. In essence, the Guatemalans and
Salvadorans will feel aggrieved at not also getting TPS (which they
seek) and the additional non-TPS measures directed at their nationals
will help to assuage their disappointment while helping those
countries
recover from Mitch.

INFORMATION

MEMORANDUM FOR THE PRESIDENT

FROM: MARIA ECHAVESTE
SAMUEL BERGER
BRUCE REED

SUBJECT: Immigration Response to Hurricane Mitch

In the wake of Hurricane Mitch, one of the key issues raised by both the Presidents of Central America and many immigration advocacy groups is what to do about Central Americans who are without legal status in the United States. In early November, the Immigration and Naturalization Service (INS) temporarily stayed removals of all nationals from Honduras, Nicaragua, El Salvador, and Guatemala. At your request, the INS then extended that delay until January 7, 1999. The long-term economic devastation and social destruction left by Hurricane Mitch, however, requires a more systematic approach to the treatment of those individuals. This memorandum sets out a proposed course of action.

Temporary Protected Status

As you know, the Attorney General has authority to grant Temporary Protected Status (TPS) for 6 to 18 months to nationals of a country if she finds that there has been an environmental disaster in that country that renders it temporarily unable to handle the return of its nationals. Persons who qualify for TPS are not subject to removal and are eligible for permission to work in the United States during the time period designated by the Attorney General.

The Department of State has evaluated conditions in Central America and recommends that the Attorney General grant TPS to nationals from Honduras and

COPY

Nicaragua. The Department of Justice (DOJ) agrees that TPS would be appropriate for nationals of these countries. We recommend that the Attorney General grant TPS to nationals from Honduras and Nicaragua for a period of one year. At the end of that one year period, the designation could be renewed.

The Department of State does not recommend TPS for nationals from El Salvador and Guatemala. The Department has concluded that the effect of Hurricane Mitch in these two countries is insufficient to warrant a TPS designation. More than 90 percent of the deaths and displacement caused by Mitch occurred in Honduras and Nicaragua. Moreover, while the economic and infrastructure damage in El Salvador and Guatemala has been serious, it is not severe enough to meet the TPS standard.

Alternative Relief for El Salvador and Guatemala

Because Mitch had serious effects on El Salvador and Guatemala and because we are interested in providing a coordinated response to all four affected countries, we believe we must also address the circumstances of Salvadorans and Guatemalans in the United States.

As you recall, the Nicaraguan Adjustment and Central American Relief Act (NACARA), enacted in late 1997, authorized virtually automatic permanent status for Nicaraguans and Cubans living in the United States since December 1995, while providing those Salvadorans and Guatemalans who applied for asylum prior to 1992 with only an opportunity to be considered under the more lenient (pre-1996 Act) rules for suspension of deportation (a form of immigration relief leading to permanent status). Hondurans were excluded altogether from this legislation. In your signing statement to the NACARA legislation, you noted that the Administration would seek to overcome disparities created by the legislation

COPY

through the implementation process. In line with this statement, DOJ has recently proposed regulations that would greatly improve the chances for Salvadorans and Guatemalans seeking to obtain permanent status by affording them an additional non-adversarial hearing before an INS officer and codifying the legal standard applicable to their claims. The regulations, however, still do not provide the kind of guarantee of permanent status enjoyed by Nicaraguans and Cubans. And although DOJ has committed to ensuring that immigration officers take the effects of Mitch into account when adjudicating suspension claims under NACARA, even this special consideration would provide no assurance that a Salvadoran or Guatemalan with a meritorious claim would obtain permanent status.

During the last session of Congress, Rep. Gutierrez sponsored legislation that would have provided amnesty to Salvadorans, Guatemalans, and Hondurans equivalent to that obtained by the Nicaraguans and Cubans in NACARA. We did not support that legislation because we have generally not favored grants of amnesty. However, given (1) that similarly situated Haitians were granted amnesty in the last session, and (2) the changed circumstances brought on by Hurricane Mitch, we recommend that we now commit to working with Congress to pass legislation that provides amnesty for Salvadorans and Guatemalans covered by NACARA, as well as a small group of similarly situated Hondurans. Though legislation of this kind would not provide relief for all nationals of El Salvador and Guatemala living in the United States, it would help a significant number -- approximately 300,000 out of an estimated 500,000 -- and would be consistent with your commitment to achieving parity for all similarly situated individuals covered by NACARA.

In addition to seeking parity through legislation, we also recommend

COPY

that we seriously consider granting Deferred Enforced Departure (DED) to those covered by the proposed legislation. We would need to identify significant U.S. foreign policy and national security interests to justify this extra-statutory measure based on your constitutional authority with respect to U.S. foreign relations. Use of DED authority would help allay the perception that Salvadorans and Guatemalans are receiving second-class treatment in our immigration policy response to Mitch, and would ensure that individuals are not subject to deportation while we seek permanent relief for them. As you recall, we granted DED to Haitians in December 1997.

Timing

Because we recommend a TPS designation for nationals of only two of the four Central American countries affected by Mitch, we strongly recommend delaying this announcement until after the visit by the four Central American presidents at the end of this week. We also recommend that when we do make the TPS announcement, we put it in the context of the broader immigration relief that we are prepared to provide to people from the region. This will help to alleviate the disappointment that El Salvador and Guatemala may feel at not being granted TPS. We also believe we should hold off on making any such announcement until we have had more of an opportunity to consult with the Hill. We have received

indications that some members, including some key Republican members, may also be interested in pursuing legislative relief for Salvadorans and Guatemalans; a premature announcement of our intention to seek parity legislation might prejudice our chances of enacting the legislation.

COPY

4

8261

cc: Vice President
Chief of Staff

COPY

Withdrawal/Redaction Sheet

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. email	Mara Rudman to Mary DeRosa re: Response to Rep: Bonior (6 pages)	01/20/1999	P5 6419
002. email	Joan Hunerwadel to James Baker re: Reminder: SRB should call Bonior (9 pages)	01/22/1999	P5 6420
003. email	Laurel Miller to James Dobbins, re: Report you requested (8 pages)	01/25/1999	P1/b(1)
004. email	Bruce McNamer to Laurel Miller, et al., re: [Briefing Paper] (8 pages)	02/02/1999	P1/b(1)
005. email	Scott Busby to Laurel Miller, re: [Briefing Paper] (8 pages)	02/02/1999	P1/b(1)
006. email	D. Holly Hammonds to Bruce McNamer, re: [Briefing Paper] (7 pages)	02/02/1999	P1/b(1)
007. email	John Duncan to D. Holly Hammonds, re: [Briefing Paper] (9 pages)	02/02/1999	P1/b(1)
008. email	Frederick Rosa to Fulton Armstrong, et al., re: [Briefing documents] (13 pages)	02/02/1999	P1/b(1)

COLLECTION:

Clinton Presidential Records
 NSC Emails
 Exchange - Record (Sept 97 - Jan 01) ([Immigration and Naturalization])
 OA/Box Number: 620000

FOLDER TITLE:

[01/20/1999 - 02/02/1999]

2011-1044-F

kel385

RESTRICTION CODES

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

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

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

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

RR. Document will be reviewed upon request.

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

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

6419

Exchange Mail

DATE-TIME 1/20/99 6:48:43 PM
FROM Rudman, Mara E.
CLASSIFICATION UNCLASSIFIED
SUBJECT FW: Response to Rep. Bonior [UNCLASSIFIED]
TO DeRosa, Mary B.

CARBON_COPY Rudman, Mara E.

TEXT_BODY
okay -- but see small changes in cover memo to more accurately reflect
how Bonior raised the specific case, as I read his letter. Also,
one question in text of letter: do you know for a fact that there
is Congressional authorization of this procedure prior to 1996?
If so, reference is okay, but would be better if you can cite specific
statutes. Bonior is not going to like this response -- he is quite
emotionally invested in this issue and thinks Palestinians are getting
screwed -- and probably didn't much like the Anti Terrorism Act of
1996 -- I just suspect he'll go back and do the research so we need
to make sure we've nailed down the legislative facts in the letter
to him. (Sorry if I've added to the work burden here. I'm hoping
it's something you know without having to research further...)

-----Original
Message-----
From: DeRosa, Mary B.
Sent: Wednesday, January 20,
1999 3:53 PM
To: Rudman, Mara E.
Subject: FW: Response to Rep.
Bonior [UNCLASSIFIED]

OK, Mara, I've finally gotten Rob's clearance.
How about you?

-----Original Message-----
From: DeRosa, Mary
B.
Sent: Monday, January 18, 1999 5:00 PM
To: Rudman, Mara E.;
Malley, Robert; Simon, Steven N.
Cc: @LEGAL - Legal Advisor; @LEGISLAT
- Legislative Affairs; @NESASIA - NE/South Asia;
@TRANSNATIONAL -

COPY

Transnational Threats
Subject: Response to Rep. Bonior [UNCLASSIFIED]

Mara/Rob/Steve:

Here is a proposed response to Rep. Bonior on his letter about the use of classified evidence in immigration proceedings. I plan to attach to the SRB memo a 4-page letter from Eric Holder about the specific case that Bonior raises. Although I don't propose to have the President discuss that case (he'll ask DOJ to respond on that) I thought SRB would want to see it as background. I'll fax it to anyone who wants it. Also, let me know if you need the incoming.

TRANSLATED_ATTACHMENT boniorsrb.doc

Date

ACTION

MEMORANDUM FOR SAMUEL R. BERGER

THROUGH: JAMES E. BAKER

FROM: MARY B. DEROSA

SUBJECT: Response to Letter from Representative Bonior on the use of Classified Evidence in Immigration Proceedings

Enclosed is a draft response from the President to Representative Bonior's letter on the use of classified evidence in immigration proceedings. Representative Bonior raised concerns about this issue generally, but pointed to the case of Mr. Mazen Al-Najjar as illustrative. The proposed response discusses the use of classified evidence generally, but does not discuss the specific case. Instead, it asks the Department of Justice to provide information on that matter.

We have received information from the Justice Department on Mr. Al-

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Najjar. In fact, Eric Holder reviewed this case last summer and sent a lengthy response setting forth the facts of that case to a letter from a Reverend William Lee. According to that response (Tab B), the fact of that case differ in a number of ways from the newspaper articles and editorials that Representative Bonior attached to his letter. We expect the Justice Department will send a similarly detailed response to Representative Bonior.

Concurrence by: Mara Rudman; Rob Malley; Steve Simon

RECOMMENDATION

That you forward the attached Memorandum to the President

Tab [I or A] [Enter brief description of attachment]

2

TRANSLATED_ATTACHMENT boniorbc.doc

ACTION

MEMORANDUM FOR THE PRESIDENT

FROM: SAMUEL BERGER
LARRY STEIN

SUBJECT: Response to Letter from Representative Bonior on the use
of Classified
Evidence in Immigration Proceedings

Purpose

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To respond to Representative Bonior, who wrote to you expressing concerns about the use by the Immigration and Naturalization Service of classified evidence in immigration proceedings.

Background

Representative Bonior's letter raises the general issue of the use of classified information in immigration proceedings, using as an example the specific case of Mazen Al-Najjar, a Palestinian who had been living in South Florida who was ordered deported and has been detained without bond pending his appeal. In the proposed response you discuss the use of classified evidence generally. You reassure Representative Bonior that it is a longstanding, legal practice that has been affirmed by the Supreme Court and authorized by Congress as recently as 1996, but is used very rarely and only when necessary. On the specific case of Mr. Al-Najjar you ask the Department of Justice to provide information to Representative Bonior. Last summer, Eric Holder directed a thorough review of the case to assess whether the use of classified evidence was warranted and appropriate. He found that it was.

RECOMMENDATION

That you sign the letter at Tab A

Attachment

Tab [I or A] [Enter brief description of attachment]

2

cc: Vice President
Chief of Staff

COPY

TRANSLATED_ATTACHMENT

boniorltr.doc
Dear David :

Thank you for your letter on the use of classified evidence in immigration proceedings. You have raised concerns about this practice that I would like to address.

As you know, Congress has authorized the consideration of classified information in immigration proceedings, most recently in 1996. [question - did Congress authorize prior to 1996? I thought it was a new item in the ATA... was it statutorily provided prior to that time or just "authorized practice" via SCt cases?] This legislation has codified a longstanding practice that has been approved by the federal courts, including the United States Supreme Court. The authority is carefully circumscribed, and it is used sparingly. There are, however, certain situations in which the government has information highly relevant to a proceeding, but that information cannot be made public without compromising intelligence-gathering operations or sources, or otherwise harming national security.

Classified evidence is used only when necessary. Any proposed use of this evidence must undergo a number of high-level reviews at the Immigration and Naturalization Service (INS) and the Department of Justice. Deputy Attorney General Holder recently has undertaken a thorough review of the regulations and policies related to the use of classified information in immigration proceedings. The aim of the review is to ensure that classified evidence is used only when necessary and only if it cannot be declassified.

It is important to note that the use of classified information is actually quite rare. It is used in only about a dozen of the approximately 300,000 cases that the INS adjudicates each year.

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I hope this provides you some reassurance on the general issue of the use of classified evidence. You have also raised questions about the use of classified information in the specific case of Mr. Mazen Al-Najjar, which is currently in litigation. I am asking the Department of Justice to respond to your important questions about that matter, which has been reviewed recently by the Deputy Attorney General.

Again, thank you for your letter.

COPY

6420

Exchange Mail

DATE-TIME 1/22/99 11:25:20 AM
FROM Hunerwadel, Joan S.
CLASSIFICATION UNCLASSIFIED
SUBJECT FW: REMINDER: SRB should call Bonior re -- Miles
[UNCLASSIFIED]
TO Baker, James E.

CARBON_COPY

TEXT_BODY

-----Original Message-----

From: Hunerwadel, Joan S.
Sent: Friday,
January 22, 1999 11:10 AM
To: Sutphen, Mona K.
Subject: FW: REMINDER:
SRB should call Bonior re -- Miles [UNCLASSIFIED]

Attached is
part of this package. The complete package w/attachments is with
the ExecSec.

-----Original Message-----

From: Baker, James
E.
Sent: Friday, January 22, 1999 10:39 AM
To: DeRosa, Mary B.;
Hunerwadel, Joan S.
Subject: FW: REMINDER: SRB should call Bonior
re -- Miles [UNCLASSIFIED]

-----Original Message-----

From: Sutphen,
Mona K.
Sent: Friday, January 22, 1999 8:58 AM
To: Baker, James
E.
Subject: RE: REMINDER: SRB should call Bonior re -- Miles
[UNCLASSIFIED]

COPY

even
better. m

-----Original Message-----

From: Baker, James E.
Sent: Friday,
January 22, 1999 8:42 AM
To: Sutphen, Mona K.
Subject: RE: REMINDER:
SRB should call Bonior re -- Miles [UNCLASSIFIED]

Mona: We can
also e-mail you the package when we have ready.

-----Original
Message-----

From: Sutphen, Mona K.
Sent: Friday, January 22,
1999 8:09 AM
To: Baker, James E.
Cc: @EXECSEC - Executive Secretary
Subject: RE:
REMINDER: SRB should call Bonior re -- Miles [UNCLASSIFIED]

great.
- exec: we'll need this one to SRB asap. m

-----Original Message-----

From: Baker,
James E.
Sent: Friday, January 22, 1999 8:09 AM
To: Sutphen, Mona
K.; Rudman, Mara E.; @LEGAL - Legal Advisor
Subject: RE: REMINDER:
SRB should call Bonior re -- Miles [UNCLASSIFIED]

package will
be forward this morning. I would hold e-mail until then.

-----Original
Message-----

From: Sutphen, Mona K.
Sent: Thursday, January 21,
1999 9:12 PM
To: Rudman, Mara E.; @LEGAL - Legal Advisor
Subject: RE:
REMINDER: SRB should call Bonior re -- Miles [UNCLASSIFIED]

before

COPY

i show him this. is there any likelihood we'll see the response on the palestinians before this call??

-----Original Message-----

From: Rudman,
Mara E.
Sent: Thursday, January 21, 1999 9:09 PM
To: @NSA - Natl
Security Advisor; Sutphen, Mona K.
Cc: @LEGISLAT - Legislative Affairs
Subject: REMINDER:
SRB should call Bonior re -- Miles [UNCLASSIFIED]
Importance: High

PLEASE
PASS TO SANDY

Calling Bonior Friday about Miles (and maybe on
Palestinian case)

You asked me to remind you to call Bonior about
Miles coming on board here.

It would be very good thing to make
this call before Miles comes over -- which is Monday, which means
you should try to reach Bonior tomorrow -- Friday.

Bonior has
been extremely gracious about Miles' departure, though he is quite
unhappy to be losing him -- and he's leaving on about 2 1/2 weeks
notice which, given the responsibilities he had there, is not a lot
of lead time for Bonior to fill the gap.

It would be helpful
in terms of future dealings with Bonior (and because it's a nice
thing to do) to let him know that you know (1) you're taking someone
very good away from him, (2) you look forward to having Miles'
expertise
here -- you know he's learned a huge amount from working with
Bonior
for almost 8 years -- and (3) you look forward to continuing to work
closely with Bonior and others in the House on our issues, and you
know Miles will make sure that relationship stays close, etc.

NOTE:

Legal has prepared and I believe forwarded a draft POTUS response
to Bonior's letter on the secret evidence issue, in which Bonior
particularly called attention to its use in cases against Palestinian,
and points to one specific case. (MONA: SRB should that draft
response

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attached when he makes the call, so he can let Bonior know the letter is on the way -- and forewarn him about the nature of the answer to his questions.)

TRANSLATED_ATTACHMENT 0417srb.doc

January 22, 1999

ACTION

MEMORANDUM FOR SAMUEL R. BERGER

THROUGH: JAMES E. BAKER

FROM: MARY B. DEROSA

SUBJECT: Response to Letter from Representative Bonior on the use of Classified Evidence in Immigration Proceedings

Attached is a draft response from the President to Representative Bonior's letter on the use of classified evidence in immigration proceedings. Representative Bonior raised concerns about this issue generally, but pointed to the case of Mr. Mazen Al-Najjar as illustrative. The proposed response discusses the use of classified evidence generally, but does not discuss the specific case. Instead, it asks the Department of Justice to provide information on that matter, which they are prepared to do.

We have received information from the Justice Department on Mr. Al-Najjar. Mr. Al-Najjar was found deportable and was denied discretionary relief (asylum, suspension of deportation, withholding of deportation) after an open hearing in which no classified evidence was used. In that hearing there was considerable unclassified testimony about Mr. Al-Najjar's association with organizations associated with the Islamic Jihad. The INS detained him without bond pending appeal. He appealed the bond denial, and a small amount of

COPY

classified information concerning Mr. Al-Najjar's association with the Islamic Jihad, along with significant unclassified material, was introduced in the bond hearing. He was given an unclassified summary of the classified material. The judge denied bond, based largely on the classified material. Eric Holder directed a careful review of this case last summer and determined that the evidence was highly relevant and could not be declassified. Unfortunately, Mr. Al-Najjar's appeal has not been decided yet, even though the INS requested an expedited review by the Board of Immigration Appeals. He has been detained since May, 1997.

Eric Holder sent a lengthy letter last summer setting forth the facts of that case to a Reverend William Lee (Tab B). Justice will send a similarly detailed letter to Representative Bonior.

Concurrence by: Mara Rudman, Rob Malley, and Steve Simon

RECOMMENDATION

That you sign the memorandum at Tab I.

Attachments

Tab I Memorandum for the President
Tab A Letter for Representative Bonior
Tab B Holder Letter to the Reverend Lee
Tab C Incoming Correspondence

2

0417

COPY

ACTION

MEMORANDUM FOR THE PRESIDENT

FROM: SAMUEL BERGER
LARRY STEIN

SUBJECT: Response to Letter from Representative Bonior on the use
of Classified
Evidence in Immigration Proceedings

Purpose

To respond to Representative Bonior, who wrote to you expressing concerns about the use by the Immigration and Naturalization Service of classified evidence in immigration proceedings.

Background

Representative Bonior's letter raises the general issue of the use of classified information in immigration proceedings, using as an example the specific case of Mazen Al-Najjar, a Palestinian who had been living in South Florida who is a deportable alien seeking discretionary relief (asylum, withholding of deportation, or suspension of deportation) and has been detained without bond pending his appeal. In the proposed response you discuss the use of classified evidence generally. You reassure Representative Bonior that it is a longstanding, legal practice that has been affirmed by the Supreme Court and authorized by Congress, but is used very rarely and only when necessary. On the specific case of Mr. Al-Najjar you ask the Department of Justice to provide information to Representative Bonior. Last summer, Eric Holder directed a thorough review of the case to assess whether the use of classified evidence was warranted and appropriate. He found that it was.

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RECOMMENDATION

That you sign the letter at Tab A.

Attachments

Tab A Letter for Representative Bonior
Tab B Holder Letter to the Reverend Lee
Tab C Incoming Correspondence

2

0417

cc: Vice President
Chief of Staff

TRANSLATED_ATTACHMENT 0417ltr.doc

Dear David:

Thank you for your letter on the use of classified evidence in immigration proceedings. You have raised concerns about this practice that I would like to address.

As you know, Congress has authorized the consideration of classified information in immigration proceedings. This legislation confirms a longstanding practice that has been incorporated in Immigration and Naturalization Service

COPY

(INS) regulations and sanctioned by the federal courts, including the United States Supreme Court. These authorities are carefully circumscribed, and used sparingly. They reflect a realization by all three branches of government that there are certain situations in which the government has highly relevant information that should be considered in determining immigration status, but that information cannot be made public without compromising intelligence-gathering operations or sources, or otherwise harming national security.

Classified evidence is used only when necessary. Any proposed use of this evidence must undergo a number of high-level reviews at the Immigration and Naturalization Service (INS) and the Department of Justice. Deputy Attorney General Holder recently has undertaken a thorough review of the regulations and policies related to the use of classified information in immigration proceedings. The aim of the review is to ensure that classified evidence is used only when necessary and only if it cannot be declassified.

It is important to note that the use of classified information is actually quite rare. It is used in only about a dozen of the approximately 300,000 cases that the INS adjudicates each year.

I hope this provides you some reassurance on the general issue of the use of classified evidence. You have also raised questions about the use of classified information in the specific case of Mr. Mazen Al-Najjar, which is currently in litigation. I am asking the Department of Justice to respond to your important questions about that matter, which has been reviewed recently by the Deputy Attorney General.

Again, thank you for your letter.

Sincerely,

COPY

The Honorable David E. Bonior
Democratic Whip
House of Representatives
Washington, D.C. 20515-2210

1

2

2

COPY

Withdrawal/Redaction Sheet

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. email	James Baker to Mo'na Sutphen and Sharon Storey, re: Bonior Talking Points] (5 pages)	03/04/1999	P1/b(1)
002. email	Caroline Krass to Jack Segal re: Urgent Press Guidance (3 pages)	03/05/1999	P5 6421
003. email	James Baker to Mona Sutphen and Nina Hachigian, re: [Bonior] (6 pages)	03/27/1999	P1/b(1)
004. email	Mary DeRosa to James Baker, re: Bonior memo (5 pages)	04/08/1999	P1/b(1)
005. email	Scott Busby to Eric Schwartz, re: [migration paper] (4 pages)	07/14/1999	P1/b(1)
006. email	Fulton Armstrong to Kenneth Bernard, et al., re: [Memo] (5 pages)	07/14/1999	P1/b(1)
007. email	Frederick Rosa to Scott Busby and Fulton Armstrong, re: [Corrected memo] (6 pages)	07/14/1999	P1/b(1)
008. email	Mara Rudman to Roseanne Hill, re: Rqst URGENT Concur on #5382 (6 pages)	07/19/1999	P1/b(1)
009. email	Frederick Rosa to Scott Busby, et al., re: Rqst URGENT Concur on #5382 (6 pages)	07/19/1999	P1/b(1)
010. email	Frederick Rosa to Scott Busby, et al., re: Rqst URGENT Concur on #5382 (7 pages)	07/19/1999	P1/b(1)

COLLECTION:

Clinton Presidential Records
 NSC Emails
 Exchange - Record (Sept 97 - Jan 01) ([Immigration and Naturalization])
 OA/Box Number: 620000

FOLDER TITLE:

[03/01/1999 - 12/22/1999]

2011-1044-F

ke1387

RESTRICTION CODES

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

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

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

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

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

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

RR. Document will be reviewed upon request.

6421

Exchange Mail

DATE-TIME 3/5/99 9:45:56 AM
FROM Krass, Caroline D.
CLASSIFICATION UNCLASSIFIED
SUBJECT FW: URGENT PRESS GUIDANCE: LAZARENKO Guidance for
clearance- [UNCLASSIFIED]
TO Segal, Jack D.

CARBON_COPY

Allen, Charles A.
Baker, James E.
DeRosa, Mary B.
Hunerwadel, Joan S.
Krass, Caroline D.
Barnett, Cheryl E.
Elkind, Jonathan H.
Faranda, Regina D.
Kaufman, Stuart J.
Pascual, Carlos E.
Segal, Jack D.
Silva, Mary Ann T.
Weiss, Andrew S.
Busby, Scott W.
Babbitt, James F.
Babcock, Douglas W.
Black, Steven K.
Bolan, Christopher J.
Boulton, Darrien D.
Davidson, Leslie K.
Fuerth, Leon S.
Hilty, Joanne M.
Orfini, Michael H.
Osius, Theodore G.
Pisani, Kristen L.
Roberts, Michael W.
Rosshirt, Thomas M.
Saunders, Richard M.
Woolston, Ann E.

TEXT_BODY

Legal has the attached changes. Explanations are in brackets.

-----Original

Message-----

From: Segal, Jack D.

Sent: Friday, March 05, 1999

COPY

9:22 AM

To: Busby, Scott W.; DeRosa, Mary B.; Baker, James E.; Pascual, Carlos E.

Cc: @LEGAL - Legal Advisor; @VP - VP Natl Security Affairs;
@RUSSIA - Russia/Ukraine

Subject: URGENT PRESS GUIDANCE: LAZARENKO

Guidance for clearance- [UNCLASSIFIED]

Importance: High

OVP

also for Brody.

TRANSLATED_ATTACHMENT 030599 Lazarenok guidance.doc

UKRAINE: FORMER PRIME MINISTER LAZARENKO'S
ASYLUM CLAIMS
March 5, 1999

CONTEXT: Former Prime Minister Pavlo Lazarenko arrived in new York February 19 and was detained by the Immigration and Naturalization service for seeking to enter the U.S. without proper documentation. He remains in detention. On March 4, Lazarenko's attorney issued a press statement alleging that the INS had reached a favorable initial decision on Lazarenko's application for political asylum.

IMPORTANT NOTE: The spokesman should neither confirm nor deny that Lazarenko has submitted an application for asylum.

Any reaction to Lazarenko's press release on his asylum application?

* It is our policy not to confirm, deny or comment on possible applications for asylum.

* I have no comment on the statement by Mr. Lazarenko's attorneys.

What is the process for an asylum case?

* Speaking generally, and not in reference to Mr. Lazarenko, the asylum process has two stages: an interview to determine whether the applicant has a

COPY

"credible fear" of persecution, and, if that standard is met, a hearing before an immigration judge.

* [Too much detail considering that we are not confirming or denying that Lazarenko is seeking asylum. Also suggests that we are hoping that he will be denied asylum, on which we should not be commenting. Could refer to INS for more information on the process.]

* Let me repeat that this discussion should not be construed to mean that Mr. Lazarenko is involved in such a process.

What about Lazarenko's claims that his return to Ukraine would be prevented by the International Convention Against Torture.

* The U.S. adheres to the standards of that Convention. I have no comment on whether that issue is relevant to Mr. Lazarenko.

If Lazarenko is not seeking asylum, why is he still being held?

* He was detained due to improper documentation presented at the time he attempted to enter the United States. The INS processes thousands of such cases every year. I refer you to the INS spokesman for details of that process.

(INS Director of Media relations Russ Bergeron, (202) 616-5000)

Withdrawal/Redaction Sheet

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. email	William Melhenny to Michael Hammer, re: [Briefing] (11 pages)	01/05/2001	P1/b(1)
002. email	William Melhenny to Michael Hammer, et al., re: [briefing - corrected copy] (11 pages)	01/05/2001	P1/b(1)
003. email	Dorothy Shea to John Wiegmann re: El Salvador (4 pages)	01/17/2001	P5 6422

COLLECTION:

Clinton Presidential Records
 NSC Emails
 Exchange - Record (Sept 97 - Jan 01) ([Immigration and Naturalization])
 OA/Box Number: 620000

FOLDER TITLE:

[11/03/2000 - 01/17/2001]

2011-1044-F

ke1397

RESTRICTION CODES

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

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

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

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

RR. Document will be reviewed upon request.

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

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

6422

Exchange Mail

DATE-TIME 1/17/01 12:01:19 PM
FROM Shea, Dorothy C. (MULTILAT)
CLASSIFICATION UNCLASSIFIED
SUBJECT RE: El Salvador: INS Seeking NSC clearance on Press Statement
[UNCLASSIFIED]
TO Wiegmann, John B. "Brad" (LEGAL)

CARBON_COPY

TEXT_BODY

Thanks.

-----Original Message-----

From: Wiegmann, John B.

"Brad" (LEGAL)

Sent: Wednesday, January 17, 2001 10:53 AM

To: Shea,

Dorothy C. (MULTILAT); Crowley, Philip J. (PRESS); @RUDMAN; @LEGAL

- Legal Advisor; @INTERAM - Inter-American

Cc: @PRESS - Public Affairs;

@NSCComm; @LEGISLAT - Legislative Affairs; @MULTILAT - Multilateral
and Humanitarian Affairs; @EXECSEC - Executive Secretary

Subject: RE:

El Salvador: INS Seeking NSC clearance on Press Statement [UNCLASSIFIED]

Dorothy

-- Please see edits on PJ's formulation below. Thanks. -- Brad

-----Original Message-----

From: Shea, Dorothy C. (MULTILAT)

Sent: Wednesday,

January 17, 2001 9:29 AM

To: Crowley, Philip J. (PRESS); @RUDMAN;

@LEGAL - Legal Advisor; @INTERAM - Inter-American

Cc: @PRESS - Public

Affairs; @NSCComm; @LEGISLAT - Legislative Affairs; @MULTILAT -
Multilateral and Humanitarian Affairs; @EXECSEC - Executive Secretary

Subject: RE:

El Salvador: INS Seeking NSC clearance on Press Statement [UNCLASSIFIED]

Thanks

PJ, and Interam for your feedback. Any other views? If not, I'll

COPY

get back to INS -- I should probably get to them by 10:00, so they have time to get this thing whipped into shape for release today.

-----Original Message-----

From: Crowley, Philip J. (PRESS)

Sent: Tuesday, January 16, 2001 5:09 PM

To: Shea, Dorothy C.

(MULTILAT); @RUDMAN; @LEGAL - Legal Advisor; @INTERAM - Inter-American

Cc: @PRESS

- Public Affairs; @NSCComm; @LEGISLAT - Legislative Affairs;

@MULTILAT

- Multilateral and Humanitarian Affairs; @EXECSEC - Executive Secretary

Subject: RE:

El Salvador: INS Seeking NSC clearance on Press Statement [UNCLASSIFIED]

I'm

sure from a policy standpoint, it is the right thing to do. However, it is a poorly written statement. If we are acting out of humanitarian concern, there is no reason to mention that the Salvadorans had the third highest number of removals last year. It is irrelevant. In the first sentence, the "pending removal" phrase is something a lawyer would love, but makes it a very confusing statement otherwise.

Why

not:

The INS announced today that it is temporarily suspending the removal of Salvadoran nationals from the United States back to El Salvador until El Salvador has time to recover from the effects of last week's devastating earthquake. This suspension will remain in effect until the INS determines that El Salvador is able to accept these individuals.

Maybe a paragraph with a quote saying this is the humanitarian thing to do under the circumstances.

Then

a paragraph summarizing what the return program is all about.

Etc.

PJ

-----Original

Message-----

From: Shea, Dorothy C. (MULTILAT)

Sent: Tuesday,

COPY

January 16, 2001 4:45 PM
To: @RUDMAN; @LEGAL - Legal Advisor; @INTERAM
- Inter-American
Cc: @PRESS - Public Affairs; @NSCComm; @LEGISLAT
- Legislative Affairs; @MULTILAT - Multilateral and Humanitarian
Affairs; @EXECSEC - Executive Secretary
Subject: El Salvador: INS
Seeking NSC clearance on Press Statement [UNCLASSIFIED]
Importance: High

All:

In Wendy's absence, INS has contacted Peter Smith and me about temporarily suspending the removal to El Salvador of Salvadoran nationals who are in INS custody, in response to an anticipated request from the Salvadorans. The AG has authority to effect this suspension (unlike, for example DED), and has already stopped removals (effective today) on its own motion.

This is to give you all a heads-up that this is coming down the pike and to seek clearance on a draft press statement, which INS will release at some point tomorrow, following the INS Commissioner's meeting with the Salvadoran Ambassador, who, it is expected, will make a formal request for this. We're also coordinating with Maria Echeveste and Irene Bueno, along with the Special Envoy for the Americas Office.

BEGIN:

"INS Temporarily
Suspends Removals of Salvadoran Nationals to El Salvador in Order
to Aid Earthquake Relief Efforts

"The Immigration and Naturalization Service (INS) today announced it has suspended, temporarily, the removal of Salvadoran nationals in INS custody, pending removal. This action was taken to assist the Salvadoran government in the recovery from the devastating earthquake that occurred over the weekend in El Salvador. The suspension of removals will remain in effect until the United States determines that the Salvadoran government is able to accept its nationals once again.

"As of January 3, 2001, INS estimates that approximately 1,100 Salvadorans were in INS custody awaiting removal to El Salvador. During Fiscal Year 2000, 4,384 Salvadorans were removed to El Salvador by INS, making it the country with the third highest number of removals from the United States."

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END

Please advise if you concur with this approach.

Thanks,
Dorothy

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Withdrawal/Redaction Sheet

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. email	James Baker to John Sparks re: Haitian DED Documents (7 pages)	12/18/1997	P5 6423
002. email	Scott Busby to Kelly Letts re: Haitians (6 pages)	12/18/1997	P5 6424
003. email	Scott Busby to Karl Hofmann re: Haitian DED Memo (5 pages)	12/19/1997	P5 6425
004. email	Frederick Rosa to Scott Busby, re: [Draft memo] (4 pages)	02/03/1998	P1/b(1)
005. email	Scott Busby to Eric Schwartz, re: [Revised memo] (5 pages)	03/30/1998	P1/b(1)

COLLECTION:

Clinton Presidential Records

NSC Emails

Exchange - Non-Record (Mar 97 - Jan 01) ([Immigration and Naturalization])

OA/Box Number: 630000

FOLDER TITLE:

[12/18/1997 - 04/13/1998]

2011-1044-F

kel398

RESTRICTION CODES

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

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

- P1 National Security Classified Information [(a)(1) of the PRA]
- P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
- P3 Release would violate a Federal statute [(a)(3) of the PRA]
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- P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

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

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

RR. Document will be reviewed upon request.

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

6423

Exchange Mail

DATE-TIME 12/18/97 9:55:59 AM
FROM Baker, James E.
CLASSIFICATION UNCLASSIFIED
SUBJECT FW: Haitian DED documents [UNCLASSIFIED]
TO Sparks, John E.

CARBON_COPY

TEXT_BODY

-----Original Message-----

From: Busby, Scott W.
Sent: Thursday,
December 18, 1997 9:36 AM
To: Baker, James E.
Subject: FW: Haitian
DED documents [UNCLASSIFIED]

Jamie -- Hold off on reviewing this
for the time being. Eric recalls that the only time this Administration
issued a similar directive (for Salvadorans in 1993), it did so orally.
Eric and I will be discussing this some more and will get back to
you with our views on what we think should happen here.

-----Original
Message-----

From: Busby, Scott W.
Sent: Thursday, December 18,
1997 8:53 AM
To: Baker, James E.
Subject: Haitian DED documents
[UNCLASSIFIED]

As discussed, here is the draft POTUS memo plus
the Memorandum to the AG. Let me know your thoughts or concerns
on the form of the AG memo. I am sharing the memo with Justice in
the meantime. I will also fax to you a similar memo issued by the
Bush Administration, which served as my model in drafting this one.
Thanks.

COPY

TRANSLATED_ATTACHMENT Haitians DED POTUS memo.doc

ACTION

MEMORANDUM FOR THE PRESIDENT

FROM: SAMUEL BERGER
BRUCE REED

SUBJECT: Deferred Enforced Departure (DED) for Certain Haitians
in the United
States

Purpose

To provide a temporary stay of deportation to certain Haitians in the
United
States.

Background

During the consideration of immigration legislation for Central
Americans this
fall, we pushed to provide similar relief to certain similarly situated
Haitians.

As you know, those efforts were unsuccessful. Nevertheless, you
indicated that
you would seek legislative relief for certain Haitians in the next
session of
Congress. You also stated that the Administration would undertake
appropriate
administrative action while we pursued such legislative relief.

Since the enactment of the legislation for Central Americans, the
Department of
Justice and White House staff have explored appropriate
administrative actions
that would fulfill your commitment on the latter issue. There are two
primary
options. First, the Attorney General could exercise her prosecutorial
discretion
to stay the deportation of certain Haitians based on the reasonable
likelihood
that legislation benefiting these individuals would pass in the near
future.

COPY

Second, you could direct the Attorney General and the Immigration and Naturalization Service to grant deferred enforced departure (DED) to a specified class of Haitians. A DED order requires that you find that it is in the foreign policy interest of the United States to delay temporarily the deportation of certain Haitians to their country.

We believe that the better of the two options is for you to direct the Attorney General to grant DED. There are powerful foreign policy reasons for doing so. First, as you know, the situation in Haiti continues to be fragile, particularly with the withdrawal of multilateral forces on November 30. The repatriation of Haitians would only contribute to the problems that Haiti now faces. Second, it would deprive Haiti of the valuable remittances it receives from its citizens in the United States-one of its primary sources of foreign exchange. Third, we have devoted substantial military, political, and economic resources to restoring democracy and stability to Haiti. Deferring the return of certain Haitians is one additional way of contributing to these developments. Fourth, President Preval has urged you to support treatment for Haitian nationals equal to that provided to Central Americans. Given our firm commitment to bringing about democratic change in Haiti, we have a strong interest in responding favorably to his request, and in communicating to him and other foreign leaders that the United States will treat foreign nationals who are here fairly and equitably.

We also believe that DED presents a more secure basis on which to grant a temporary stay of deportation to these Haitians than does the Attorney General's exercise of prosecutorial discretion in these circumstances. The exercise of prosecutorial discretion of the type described is permissible only so

COPY

long as there is a reasonable likelihood of legislative success. While we believe at present that there is a solid chance that we can obtain legislative relief for the Haitians, that could change quickly given the controversy this legislative effort has already generated. This, in turn, would warrant an end to any stay based on prosecutorial discretion. We also think this approach may be subject to greater Congressional scrutiny than DED because there is less clear precedent for staying the enforcement of the immigration laws based on pending legislation. For these reasons, we think it unwise and potentially disadvantageous to our overall legislative effort to have the Attorney General issue a temporary stay based on her prosecutorial discretion.

The other issues for decision are the size of the group of Haitians who would be eligible for DED and the length of time they would be granted DED. Because of the Administration's strong commitment to immigration enforcement, we do not believe, as some have suggested, that it would be appropriate to make eligible for DED all Haitians currently without status in the United States (approximately 105,000 persons). Instead, we recommend directing a grant of DED for one year to Haitians who were paroled into the United States prior to December 31, 1995 - this includes the so-called "Guantanamo Haitians" who were brought in by the Bush Administration in the wake of Aristide's ouster and certain others who were apprehended at the border and later granted parole - and Haitians who applied for asylum prior to that same date. (We think the December 31, 1995 cut-off date is appropriate because it covers all Haitians who were brought from Guantanamo Bay Naval Base and most who fled the military regime in Haiti and later applied for asylum.) This group is also consistent with the group identified by the legislation that has been introduced by Sen. Bob Graham and Rep. John Conyers

COPY

(approximately 41,000 individuals). Excluded from the group would be certain criminals, persons who constitute a threat to the community of the United States or who pose a danger to national security, and persons who have voluntarily returned to Haiti or another country of last habitual residence.

We believe that a one year grant of DED would permit us to push for legislative relief for Haitians throughout the full next session of Congress. If such efforts were unsuccessful, we could then make a decision about appropriate next steps before the next Congress, including whether to further extend DED for this group of Haitians. A longer grant of DED would take us beyond the next session of Congress.

RECOMMENDATION

That you sign the attached memorandum directing the Department of Justice to grant DED for one year to the group of Haitians described above.

Attachment

Tab I Memorandum for the Attorney General

2

cc: Vice President
Chief of Staff

TRANSLATED_ATTACHMENT Haitians DED Memo to the AG.doc

MEMORANDUM FOR THE ATTORNEY GENERAL

SUBJECT: Measures Regarding Certain Haitians in the United States

COPY

Over the past several decades, many Haitians have been forced to flee their country because of persecution and civil strife and have sought the protection of the United States. A significant number of these Haitians were brought into the United States from Guantanamo Bay Naval Base by President Bush following the overthrow of President Aristide in 1991. Others arrived here and were paroled or applied for asylum. Many of these Haitians continue to be without legal status in the United States. I have determined that it is in the foreign policy interest of the United States to defer for one year the deportation of these persons.

Accordingly, I now direct you to take any steps necessary, pursuant to your authority under law, including the Immigration and Nationality Act, to provide to these Haitians:

1. deferral of enforced departure from the United States until [one year from date of signature]; and
2. authorization for employment until [one year from date of signature].

This directive shall apply to any Haitian national who was paroled into the United States before December 31, 1995 or who filed for asylum before December 31, 1995.

The directive shall not apply to (1) any Haitian national who has been convicted of an aggravated felony; (2) any Haitian national whom the Attorney General has reason to believe constitutes a threat to the community of the United States or presents a danger to national security; or (3) any Haitian national who voluntarily returns to Haiti or his or her country of last habitual residence outside the United States.

These measures should be taken today, [date of signature].

COPY

2

COPY

6424

Exchange Mail

DATE-TIME 12/18/97 4:29:11 PM
FROM Busby, Scott W.
CLASSIFICATION UNCLASSIFIED
SUBJECT FW: Haitians [UNCLASSIFIED]
TO Letts, Kelly J.

CARBON_COPY

TEXT_BODY

-----Original Message-----

From: Schwartz, Eric P.
Sent: Thursday,
December 18, 1997 4:16 PM
To: Busby, Scott W.
Subject: FW: Haitians
[UNCLASSIFIED]

I said two pages! What do you think? I've made
one substantive change, I think. In your discussion of Gramm
legislation,
I've changed "consistent" to "identical." Is that right?

Eric

-----Original Message-----

From: Busby, Scott W.
Sent: Thursday,
December 18, 1997 3:59 PM
To: Schwartz, Eric P.
Subject: Haitians
[UNCLASSIFIED]

TRANSLATED_ATTACHMENT

Haitians DED BERGER memo.doc

December 18, 1997

ACTION

COPY

MEMORANDUM FOR SAMUEL R. BERGER

THROUGH: ERIC SCHWARTZ

FROM: SCOTT BUSBY

SUBJECT: Deferred Enforced Departure for Certain Haitians

Attached is a decision memorandum to the President on the above subject.

Concurrence by: Karl Hofmann; Mara Rudman; Jamie Baker

RECOMMENDATION

That you forward the attached memorandum to the President.

Attachment

Tab I Memorandum to the President

Tab A Memorandum to the Attorney General

1

TRANSLATED_ATTACHMENT Haitians DED POTUS memo.doc

ACTION

MEMORANDUM FOR THE PRESIDENT

FROM: SAMUEL BERGER
BRUCE REED

SUBJECT: Deferred Enforced Departure (DED) for Certain Haitians
in the United
States

Purpose

COPY

To provide a stay of deportation to certain Haitians.

Background

During the consideration of immigration legislation for Central Americans this fall, we urged relief to similarly situated Haitians, but those efforts were unsuccessful. You subsequently stated that you would seek legislative relief for the Haitians and, in the meantime, that you would take appropriate administrative action for these individuals.

Interim Action: Deferred Enforced Departure: We recommend that you now direct the Attorney General and the Immigration and Naturalization Service to grant deferred enforced departure (DED) to this group - comprised primarily of those who fled Haiti after the 1991 coup. Justice concurs in this recommendation, which requires that you find that it is in the foreign policy interest of the United States to do so.

There are powerful foreign policy reasons for granting DED to this group. The situation in Haiti remains fragile, and the repatriation of the Haitians could contribute to the economic and social problems that Haiti now faces. It would also deprive Haiti of valuable remittances - one of its primary sources of foreign exchange. Furthermore, President Preval has urged you to support equal treatment for Haitians and we have a strong interest in responding favorably to his request -- not only to foster ongoing cordial relations, but also to communicate to him and the international community that the United States will treat foreign nationals fairly and equitably.

Alternative to DED: In lieu of DED, we did consider recommending that the Attorney General exercise her prosecutorial discretion to stay the deportation of these Haitians based on the reasonable likelihood that legislation benefiting

COPY

them would soon be adopted. However, we do not recommend such an approach, given the uncertain prospects for the legislation and our belief that such action by the Attorney General would be subject to greater congressional scrutiny and opposition than DED.

Size of the Group: We recommend directing a grant of DED for one year to Haitians who were paroled into the United States prior to December 31, 1995 - this includes the so-called "Guantanamo Haitians" who were brought in by the Bush Administration in the wake of Aristide's ouster and certain others who were apprehended at the border and later granted parole - and Haitians who applied for asylum prior to that same date (approximately 40,000 individuals). Excluded would be certain criminals as well as persons who pose a danger to the United States. This group is identical to that included in legislation introduced by Sen. Bob Graham and Rep. John Conyers.

If, during the one-year grant of DED, our effort to seek legislative relief is unsuccessful, we can then make a decision about appropriate next steps.

RECOMMENDATION

That you sign the attached memorandum directing the Attorney General to grant DED for one year to the group of Haitians described therein.

Attachments
Tab I Memorandum to the Attorney General

2

cc: Vice President
Chief of Staff

COPY

TRANSLATED_ATTACHMENT Haitians DED Memo to the AG.doc

MEMORANDUM FOR THE ATTORNEY GENERAL

SUBJECT: Measures Regarding Certain Haitians in the United States

Over the past several decades, many Haitians have been forced to flee their country because of persecution and civil strife and have sought the protection of the United States. A significant number of these Haitians were brought into the United States from Guantanamo Bay Naval Base by President Bush following the overthrow of President Aristide in 1991. Others arrived here and were paroled or applied for asylum. Many of these Haitians continue to be without legal status in the United States. I have determined that it is in the foreign policy interest of the United States to defer for one year the deportation of these persons.

Accordingly, I now direct you to take any steps necessary, pursuant to your authority under law, including the Immigration and Nationality Act, to provide to these Haitians:

1. deferral of enforced departure from the United States until [one year from date of signature]; and
2. authorization for employment until [one year from date of signature].

This directive shall apply to any Haitian national who was paroled into the United States before December 31, 1995 or who filed for asylum before December 31, 1995.

The directive shall not apply to (1) any Haitian national who has been convicted of an aggravated felony; (2) any Haitian national whom the Attorney General has

COPY

reason to believe constitutes a threat to the community of the United States or presents a danger to national security; or (3) any Haitian national who voluntarily returns to Haiti or his or her country of last habitual residence outside the United States.

These measures should be taken today, [date of signature].

6425

Exchange Mail

DATE-TIME 12/19/97 9:09:57 AM
FROM Busby, Scott W.
CLASSIFICATION UNCLASSIFIED
SUBJECT Haitian DED Memo [UNCLASSIFIED]
TO Hofmann, Karl W.

CARBON_COPY

TEXT_BODY Here's the revised as we discussed. OK?

TRANSLATED_ATTACHMENT

8518 POTUS.doc

ACTION

MEMORANDUM FOR THE PRESIDENT

FROM: SAMUEL BERGER
BRUCE REED

SUBJECT: Deferred Enforced Departure (DED) for Certain Haitians
in the United
States.

Purpose

To provide a stay of deportation to certain Haitians.

Background

During the consideration of immigration legislation for Central Americans this fall, we urged relief to similarly situated Haitians, but those efforts were unsuccessful. You subsequently stated that you would seek legislative relief for these Haitians and, in the meantime, that we would take appropriate

COPY

administrative action for these individuals.

Interim Action: Deferred Enforced Departure: We recommend that you now direct the Attorney General and the Immigration and Naturalization Service to grant deferred enforced departure (DED) to this group - comprised primarily of those who fled Haiti after the 1991 coup. Justice concurs in this recommendation, which requires that you find that it is in the foreign policy interest of the United States to do so.

In addition to fairness and equity, there are powerful foreign policy reasons for granting DED to this group. The situation in Haiti remains fragile, and the repatriation of these Haitians could increase the economic and social problems that Haiti now faces. It would also deprive Haiti of valuable remittances - an important source of foreign exchange given the country's current depressed economic state. Furthermore, we have a strong interest in communicating to the Haitian government and the international community that the United States will treat foreign nationals fairly and equitably.

Alternative to DED: In lieu of DED, we did consider whether the Attorney General might exercise her prosecutorial discretion to stay the deportation of these Haitians based on the reasonable likelihood that legislation benefiting them would soon be adopted. However, we do not recommend such an approach, given the uncertain prospects for the legislation and our belief that such action by the Attorney General would be subject to greater congressional scrutiny and opposition than DED.

Size of the Group: We recommend directing a grant of DED for one year to Haitians who were paroled into the United States prior to December 31, 1995 - this includes the so-called "Guantanamo Haitians" who were brought in by the Bush

COPY

Administration in the wake of Aristide's ouster and certain others who were apprehended at the border and later granted parole - and Haitians who applied for asylum prior to that same date (approximately 40,000 individuals). Excluded would be certain criminals, persons who pose a danger to the United States, Haitians who have returned or will return to Haiti, and Haitians who have previously been deported. This group is very similar to that included in legislation introduced by Sen. Bob Graham and Rep. John Conyers that would provide permanent relief to these individuals.

A one-year grant of DED will give us the entire next session of Congress to pursue a legislative solution. If that effort is unsuccessful, we can then make a decision about appropriate next steps.

RECOMMENDATION

That you sign the attached memorandum directing the Attorney General to grant DED for one year to the group of Haitians described therein.

Attachments

Tab I Memorandum to the Attorney General

2

8518

cc: Vice President
Chief of Staff

TRANSLATED_ATTACHMENT 8518 Reno.doc

MEMORANDUM FOR THE HONORABLE JANET RENO
The Attorney General

COPY

SUBJECT: Measures Regarding Certain Haitians in the
United States

Over the past several decades, many Haitians have been forced to flee their country because of persecution and civil strife and have sought the protection of the United States. A significant number of these Haitians were brought into the United States from Guantanamo Bay Naval Base by President Bush following the overthrow of President Aristide in 1991. Others arrived here and were paroled or applied for asylum. Many of these Haitians continue to be without legal status in the United States.

Pursuant to my constitutional authority to conduct foreign relations of the United States, I have determined that it is in the foreign policy interest of the United States to defer for at least one year the deportation of any Haitian national who was paroled into the United States before December 31, 1995 or who filed for asylum before December 31, 1995 and who has been continuously present in the United States since that date.

Accordingly, I now direct you to take any steps necessary to provide to these Haitians:

1. deferral of enforced departure from the United States until [one year from date of signature]; and
2. authorization for employment until [one year from date of signature].

This directive shall not apply to (1) any Haitian national who has been convicted of an aggravated felony; (2) any Haitian national who the Attorney General has reason to believe constitutes a threat to the community of the United States or presents a danger to national security; (3) any Haitian national who voluntarily

COPY

returned or returns to Haiti or his or her country of last habitual residence outside the United States; or (4) any Haitian national who was deported, excluded, or removed prior to the date of this order.

These measures should be taken today, [date of signature].

2

8518

COPY

Withdrawal/Redaction Sheet

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. email	Scott Busby to Charles Allen re: Clearances Please (8 pages)	05/22/1998	P5 6426

COLLECTION:

Clinton Presidential Records
NSC Emails
Exchange - Non-Record (Mar 97 - Jan 01) ([Immigration and Naturalization])
OA/Box Number: 630000

FOLDER TITLE:

[05/13/1998 - 05/22/1998]

2011-1044-F
ds363

RESTRICTION CODES

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

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

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

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

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

RR. Document will be reviewed upon request.

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

6426

Exchange Mail

DATE-TIME 5/22/98 10:21:33 AM
FROM Busby, Scott W.
CLASSIFICATION UNCLASSIFIED
SUBJECT FW: Clearances Please: Use of Classified Info in Immigration Proceedings
[UNCLASSIFIED]
TO Allen, Charles A.

CARBON_COPY

TEXT_BODY

Chuck -- Wonder if I could prevail upon you to clear this one, too. Mary had dealt with previously and Jamie has been too busy to deal with it. I will fax incoming to you. Scott

-----Original Message-----

From: Busby,
Scott W.
Sent: Wednesday, May 20, 1998 5:56 PM
To: Hunerwadel,
Joan S.; @LEGAL - Legal Advisor
Subject: FW: Clearances Please:
Use of Classified Info in Immigration Proceedings [UNCLASSIFIED]

Jo

-- Need your help in getting someone at Legal to clear this. Justice (John Morton) has cleared. thx. Scott

-----Original Message-----

From: Busby,
Scott W.
Sent: Tuesday, May 19, 1998 6:33 PM
To: Baker, James
E.; @LEGAL - Legal Advisor
Subject: FW: Clearances Please: Use of
Classified Info in Immigration Proceedings [UNCLASSIFIED]

Jo --

In response to Jamie's questions on this, this letter has been cleared by John Morton at Justice. Can't find earlier comments by Jamie on this; Mary cleared earlier draft. Scott

-----Original Message-----

From: Busby,

COPY

Scott W.
Sent: Tuesday, May 19, 1998 6:32 PM
To: Clarke, Richard
A.; Countryman, Thomas M.
Cc: @LEGAL - Legal Advisor; @GLOBAL -
Global Affairs; @NESASIA - NE/South Asia; @LEGISLAT -
Legislative
Affairs
Subject: RE: Clearances Please: Use of Classified Info in
Immigration Proceedings [UNCLASSIFIED]

Dick/Steve, Gina, Tom,
Jamie, Dave,

Per Dick's comment below, I have revised the package
to exclude discussion of details of the Al-Najjar case. Would
appreciate
your clearances by COB tomorrow. Thank you.

-----Original
Message-----

From: Clarke, Richard A.
Sent: Thursday, May 14,
1998 4:15 PM
To: Countryman, Thomas M.; Busby, Scott W.
Cc: @LEGAL
- Legal Advisor; @GLOBAL - Global Affairs; @NESASIA -
NE/South Asia
Subject: RE:
Clearances Please: Use of Classified Info in Immigration Proceedings
[UNCLASSIFIED]

While I concur in the substance of the proposed
response, I find it entirely inappropriate that the President of
the United States be writing to Congressmen with the detailed status
of an individual who is still in Federal custody.

I recommend
that the response be generalized and deal with policy, noting that
the specifics of the Najer case will be provided by the Justice
Department.
We would then request DOJ to send a specific reply.

If other

COPY

offices can't agree with this, i would request a split memo to Sandy.

RAC

-----Original Message-----

From: Countryman, Thomas M.

Sent: Thursday,

May 14, 1998 3:51 PM

To: Busby, Scott W.

Cc: @LEGAL - Legal Advisor;

@GLOBAL - Global Affairs; @NESASIA - NE/South Asia

Subject: FW:

Clearances Please: Use of Classified Info in Immigration Proceedings
[UNCLASSIFIED]

I clear for NESA

-----Original Message-----

From: Busby,

Scott W.

Sent: Wednesday, May 13, 1998 5:51 PM

To: @LEGAL - Legal

Advisor; @NESASIA - NE/South Asia; @GLOBAL - Global Affairs

Subject: FW:

Clearances Please: Use of Classified Info in Immigration Proceedings
[UNCLASSIFIED]

Still need clearances from Jamie Baker, Tom Countryman,
and Steve Simon on this re-do package. Thank you.

-----Original
Message-----

From: Busby, Scott W.

Sent: Tuesday, May 12, 1998

2:21 PM

To: Simon, Steven N.; Sherman, David J.; DeRosa, Mary B.;

Abercrombie-Winstanley, Gina K.; Countryman, Thomas M.

Cc: @LEGISLAT

- Legislative Affairs; @LEGAL - Legal Advisor; @INTEL -
Intelligence

Programs; @NESASIA - NE/South Asia; @GLOBAL - Global
Affairs

Subject: Clearances

Please: Use of Classified Info in Immigration Proceedings
[UNCLASSIFIED]

This

package is a re-do based on a couple of questions from Jim Steinberg.
Questions are made clear in Berger memo. Substance of response has

COPY

not significantly changed but cover memoranda have. Thanks.

<< File: 1334 BERGER Memo (RE-DO).doc >> << File: 1334
POTUS Memo.doc
>> << File: 1334 Campbell Response.doc >>

TRANSLATED_ATTACHMENT 1334 BERGER Memo (RE-DO).doc

May 20, 1998

ACTION

MEMORANDUM FOR SAMUEL R. BERGER

THROUGH: ERIC SCHWARTZ

FROM: SCOTT BUSBY

SUBJECT: Congressional Letter: Use of Classified Evidence in
Immigration
Proceedings

Attached is a memorandum to the President and a proposed response
to
Congressional correspondence on the above subject.
This package has been delayed while the Department of Justice has
been reviewing
its position on this issue.

Jim Steinberg asks whether the position taken in the proposed letter
from the
President will have implications for the current Iraqi deportation cases
that
also involve the use of classified information. The views expressed by
the
President in this letter are consistent with what the Department of
Justice has
done and will be doing in the Iraqi cases; they do not prejudice that
position.

Jim also asks whether Mr. Al-Najjar might circumvent this restriction
by
obtaining an attorney with the requisite security clearances, as the
Iraqis
appear to have done by obtaining the representation of former CIA
director James
Woolsey. Obtaining such an attorney may be possible, but Justice

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points out that because counsel, as a legal matter, sits in the alien's shoes, any release of information would have to be made to both counsel and the alien. Since the alien does not have the requisite clearances -- indeed, in almost all of these cases, the alien is believed to pose a security threat to the United States -- Justice has concluded that it cannot release the classified information even if counsel has the requisite clearances. Therefore, Justice does not intend to provide Mr. Woolsey with the classified information relied on in the Iraqi cases.

Nevertheless, Justice is reviewing its current guidelines for the use of classified material in immigration proceedings to ensure that it is providing as much information as possible to aliens about the actions that have been taken against them.

Concurrence by: Steve Simon, Dave Sherman, Mary DeRosa, Gina Abercrombie-Winstanley, Tom Countryman

RECOMMENDATION

That you sign the attached memorandum to the President at Tab I.

Attachments

Tab I Memorandum to the President

Tab A Proposed Responses

Tab B Incoming Correspondence

2

1334/REDO

TRANSLATED_ATTACHMENT 1334 POTUS Memo.doc

ACTION

COPY

MEMORANDUM FOR THE PRESIDENT

FROM: SAMUEL BERGER
LARRY STEIN

SUBJECT: Use of Classified Evidence in Immigration Proceedings

Purpose

To respond to a letter from Representative Tom Campbell and three other Members of Congress.

Background

Representative Campbell and three colleagues express their opposition to the use by the Immigration and Naturalization Service (INS) of classified information in immigration proceedings. In particular, they raise concern about the case of Mr. Mazen Al-Najjar, a Palestinian who has been detained by INS since he was found deportable by an immigration judge in 1997. INS has justified Mr. Al-Najjar's detention, in part, on the basis of classified information.

U.S. courts have long permitted the use of classified information in immigration proceedings, primarily to justify detention of deportable aliens or the denial of discretionary relief to them. These rules were codified by the Congress in 1996. However, INS tries to limit its use of classified information to the extent it can. It also seeks to provide the alien with as complete a summary of the classified information as possible. Your response emphasizes these limitations.

RECOMMENDATION

That you sign the attached letters at Tab A.

Attachments

Tab A Letters for Signature

Tab B Incoming Correspondence

COPY

2

1334/REDO

cc: Vice President
Chief of Staff

TRANSLATED_ATTACHMENT 1334 Campbell Response.doc

Dear Representative Campbell:

Thank you for your letter regarding the use of classified information in immigration proceedings.

U.S. courts have long permitted the use of classified information for certain purposes in immigration proceedings, and Congress codified these rules in 1996.

Congress also mandated that the Attorney General should seek to remove those aliens who may pose a risk to the national security. Consequently, when the Immigration and Naturalization Service (INS) believes that an alien poses a risk to national security, it has a duty to seek the removal of that alien from the United States and to present relevant evidence, including any classified information where appropriate, that may help to ensure that alien's removal.

Regarding the case of Mazen Al Najjar, the INS did not rely on classified information in seeking his deportation. Mr. Al- Najjar overstayed his visa and was found to be deportable on that basis by an immigration judge. The INS then

COPY

detained him to help ensure his deportation. Mr. Al-Najjar challenged his detention. It was at that time that the INS presented classified information, which in its view required his ongoing detention. Nevertheless, Mr. Al-Najjar was provided with an unclassified summary of the classified information, which permitted him to challenge his detention and to appeal the immigration judge's decision on this issue.

In order to allow aliens to make effective challenges to administrative decisions, the INS seeks to limit the use of classified information to the extent that it reasonably can. In some cases, however, national security concerns require the use of such information.

Thank you for sharing your concerns with me about this important issue.

Sincerely,

The Honorable Tom Campbell
House of Representatives
Washington, D.C. 20515

COPY

Withdrawal/Redaction Sheet

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. email	Scott Busby to Jeffrey DeLaurentis, re: [Migrants] (8 pages)	06/01/1998	P1/b(1)
002. email	Lawrence Butler to Mary DeRosa re: New Deportation Memo (9 pages)	06/11/1998	P5 6427
003. email	Scott Busby to Dora Kale, re: Please Prepare Package (6 pages)	06/12/1998	P1/b(1)
004. email	Erica Barks-Ruggles to Scott Busby and Jeremy Weinstein (5 pages)	08/03/1998	P5 6428
005. email	Scott Busby to Erica Barks-Ruggles and Jeremy Weinstein re: Memo on Liberians (5 pages)	08/04/1998	P5 6429
006. email	Jeremy Weinstein to Gayle Smith re: GS - Liberian Refugees (5 pages)	08/05/1998	P5 6430
007. email	Scott Busby to Dora Kale re: POTUS memo on Deportation (5 pages)	08/06/1998	P5 6431
008. email	Jeremy Weinstein to Erica Barks-Ruggles re: Information Memorandum for NSC (4 pages)	08/10/1998	P5 6432

COLLECTION:

Clinton Presidential Records
NSC Emails
Exchange - Non-Record (Mar 97 - Jan 01) ([Immigration and Naturalization])
OA/Box Number: 630000

FOLDER TITLE:

[06/01/1998 - 11/16/1998]

2011-1044-F
ke1399

RESTRICTION CODES

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

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

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

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

RR. Document will be reviewed upon request.

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

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

6427

Exchange Mail

DATE-TIME 6/11/98 8:30:41 PM
FROM Butler, Lawrence E.
CLASSIFICATION UNCLASSIFIED
SUBJECT New Deportation memo [UNCLASSIFIED]
TO DeRosa, Mary B.

CARBON_COPY

TEXT_BODY

I wanted your comments on this before we meet with Seikaly. Once you all have given it a reality check, we'll need to consult ASAP with Mara Rudman (Congress plays a huge role in every scenario) -- and then float up to Jim and Sandy.

FYI -- this is a hybrid of your memo and two I found from last summer, including a Justice department note.

TRANSLATED_ATTACHMENT

4107.doc

June 11, 1998

ACTION

MEMORANDUM FOR SAMUEL R. BERGER

THROUGH: JAMES BAKER

FROM: MARY DEROSA AND LAWRENCE BUTLER

SUBJECT: Northern Ireland Peace Implementation: Deportation and other legal issues

The President asked for NSC comment on a piece on deportation of Noel Cassidy that appeared in an Irish-American publication, the Irish People (associated with

COPY

Sinn Fein). We have prepared a decision memo for the President, outlining the options for dealing with the pending deportation cases.

Concurrence by: Mara Rudman, Don Bandler

RECOMMENDATION

That you sign the Memorandum to the President at Tab I.

Attachment

Tab I Memorandum to the President
Tab A Annotated "Irish People" article
1

4107

TRANSLATED_ATTACHMENT 4107Pre.doc

ACTION

MEMORANDUM FOR THE PRESIDENT

FROM: SAMUEL BERGER
LARRY STEIN
CHARLES F. C. RUFF

SUBJECT: Northern Ireland Peace Implementation -- Deportations
and other legal
issues

Purpose

Your note on Irish deportations (Tab A - clipping from a NORAIID/Sinn Fein publication, The Irish People) highlighted the need to begin moving towards a permanent resolution of the cases that were suspended in support of the peace process. As you know, existing immigration law provides little

COPY

flexibility on these cases because of the individuals' terrorist connections. There is a powerful foreign policy rationale for taking the next step now. This memo reviews the state of play and provides policy options for your decision.

Background

IRA Deportees. There are ten or more Irish men in the United States ineligible for Legal Permanent Resident (LPR) status due to criminal records stemming from terrorist-related convictions in the United Kingdom. Last fall, following the reestablishment of the IRA cease-fire, the Attorney General acted on a recommendation of the Secretary of State to suspend deportation proceedings against six named individuals with IRA-connections, and held off from acting against several others.

Non-IRA deportee. Proceedings continued against one person with a previous connection to an Irish paramilitary organization (INLA) that is still engaged in terrorism and opposed to the Good Friday Accord. He has a court date in October and has attracted considerable support from the local Philadelphia Irish advocacy organizations. He is not in imminent danger of deportation, but faces financial hardship from legal bills.

New names. We anticipated that there would be others in the same situation. The Irish People clipping alerted us to one, Noel Cassidy, who seems to have been a prominent advocate here for IRA prisoners following his own conviction in 1979. Sinn Fein has not approached us about this case so far. He is facing court hearings this fall, but is not in imminent danger of deportation.

Extraditees. There is a more complicated issue involving the three IRA men who escaped to the United States from the Maze in 1983 and are in jail awaiting

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extradition proceedings to be completed. The British government is evaluating how to handle this situation in light of the Accord (there are also ongoing trials in the UK for IRA-associated terrorist acts committed before the Accord). Even without the extradition request, these three would be in the deportee category -- but not having served out their sentences, unlike all the others.

Good Friday Implementation. With the successful referenda, the peace process is deep the implementation phase. The British government has established its policing reform commission and tabled a draft bill on prisoners to deliver on its commitment that all eligible persons are released within two years. We are never going to have a better climate than the next six months with Congress and Irish-American activists to support our efforts for peace in Ireland - witness Senator Toricelli's recent call for increased IFI funding. It is counter-intuitive for us to not undertake a similar reconciliation effort regarding persons with old convictions who took themselves out of the conflict a long time ago and have built new lives here in the United States. Any efforts to deport these persons would also provoke a very sharp Congressional reaction, in addition to a public outcry from community organizations, which could have an adverse impact on peace implementation in Ireland.

There are compelling foreign policy grounds for this course of action. Suspension of deportation was a significant deliverable for Gerry Adams in his successful effort to restore the cease-fire and gain Irish Republican acceptance of commitment to purely democratic means to advance their goals. Returning long-term residents of the United States who were connected to IRA violence to Ireland would be seen as reneging on an important, if implicit, part of the final package, as well as inject the seeds of an incident destabilizing to peace implementation; this could take the form of a rival paramilitary seeking to

COPY

settle an old score (the former INLA man's father resides in Belfast and was the target of a letter bomb recently). At a minimum, it puts one more disgruntled and unemployed person/family back into Northern Ireland at a psychologically bad time. Allowing these persons to remain here sends a powerful signal that we share the forward-looking focus of the Good Friday Accord and will do our part for peace implementation and encourage those who would eschew the violence of the past and create new lives.

The Justice Department is likely to be very reluctant to take any additional action to improve, or permanently resolve, the situation for these individuals, without some showing of additional foreign policy need. There are very real concerns that the actions we take on behalf of these people will expose us, both legally and politically, to charges of inconsistency and even racism in our policy with respect to removal of alien terrorists. Some courts have already heard and accepted allegations that the U.S attempts to deport Arab terrorists (eight PFLP supporters) amount to selective prosecution. Additionally, any accommodation for the deportees has the potential to tempt other persons with IRA-related terrorist convictions not currently in the United States to attempt to enter to take advantage of the precedent.

There are is one fundamental issue to be decided, whether or not the ten-plus deportees should be allowed to remain indefinitely in the United States. If you agree that they should remain in the interests of the peace process, there are a number of vehicles for implementing that decision. In the meantime, we are working with Justice/INS to ameliorate the conditions the individuals with suspended deportation proceedings (remove bail requirement, arrange for permission to travel to and from the United States for emergency humanitarian

COPY

purposes, and extend suspension to new cases fitting the profile of the others).

Issue I. Continued U.S. Residence

RECOMMENDATION. The NSC, (and other agencies?) strongly recommend(s) Option A -- that those individuals who have been in the United States for a period of time, who have not been involved in political violence in Northern Ireland since their original convictions and who are not wanted in the United Kingdom, be permitted to remain in the United States. This recommendation extends to persons with IRA-related convictions, as well as to the one INLA-related individual. It does not extend as to those persons who have not been in the United States for the past few years, or who have recent criminal records. The Justice Department does not concur in this recommendation (for following reasons....)

A. Allow all persons falling in the described category of Irish deportees to remain in the United States, including the three extraditees should the UK drop proceedings as part of the Good Friday Accord, with means to be determined by other options below.

Approve _____

Or

B. Maintain status quo suspensions for later review, do not intervene in ongoing or new cases, do not include the extraditees.

Approve _____

Issue II. Options for continued U.S. Residence

A. Parole. Ask the Attorney General to exercise her discretionary parole authority. This does not confer a formal status, but permits the person to remain here indefinitely and pursue any legal remedies available. This entails

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some personal hardship in being in perpetual legal limbo, not being able to freely travel to and from the United States (work permits, bail, other issues involved.) This, however, is the simplest option, sidesteps the Immigration and Naturalization Act's (INA) absolute non-waiverability in terrorist-related convictions for immigrants, and would not be seen as having a demonstration effect in other areas (Middle East terrorist groups such as PFLP) and is recommended by the DOJ as having the least negative impact on our legal policy and counter-terrorist interests.

Approve _____

Or

B. Executive Order. You have the option of issues an EO to "defer deportation" indefinitely of this category of individuals, similar to what President Bush did for Chinese students following Tienamen Square. The basis would be promotion of an important foreign policy interest -- namely implementation of the Good Friday Accord. This is marginally better than the parole option as we could make provisions for travel in and out of the country for humanitarian reasons (funerals, etc.).

Approve _____

Or

C. Private Relief Bill. The option of Congress providing relief by enacting a private bill has always existed, but not exercised because of the potential complications that could have faced the introducing member. There are potentially a number of members who might introduce such a bill in light of the Accord if you were to signal your support (heretofore we have followed policy of not commenting on such bills until presented to you. This has been a sound

COPY

policy, particularly where individual members seek your political support before taking measure of fellow Congressional reaction on controversial bills. The current circumstances argue to make this an exception). This would be a permanent legal fix for a specific named individuals (and could apply to the three extradition cases). This is both good and bad in the sense that it would not applying to other persons falling into the same category now in the United States, but conversely would not encourage those in Ireland from attempting to get favorable immigration status by sneaking into the country and seeking to adjust status. The NSC, and ... support this particular option.

Approve _____

Or

D. Amend INA. The most ambitious approach available. It is possible to make a legislative fix to the Immigration and Naturalization Act provisions that currently block LPR status for this category of person. This would have be carefully done so as not to affect the intent of the legislation which was to prevent terrorists from living in the United States. Bruce Morrison has offered his expertise with the law to craft a carve-out that would give the Attorney General the needed discretion to cover these specific persons in the context of the Good Friday Accord, without risking an opening to other persons with terrorist backgrounds. We would have to find an appropriate legislative vehicle in order to ensure a smooth passage this legislative session. The NSC (Europe, Legal?, Legislate? Global? Democracy?) strongly(?) recommends this option as it puts us squarely in the forefront of Northern Ireland peace implementation.

Approve _____

COPY

55A20049.FIN
6
Attachment
Tab A Article from "The Irish People" on Noel Cassidy, with
Presidential
annotation

6

4107

cc: Vice President
Chief of Staff

COPY

35E3456F.FIN

6428

Exchange Mail

DATE-TIME 8/3/98 11:12:43 PM
FROM Barks-Ruggles, Erica
CLASSIFICATION UNCLASSIFIED
SUBJECT FW: Liberians [UNCLASSIFIED]
TO Busby, Scott W.
Weinstein, Jeremy M

CARBON_COPY Barks-Ruggles, Erica
Battenfield, Pat A.
Hill, Roseanne M.
Prendergast, John P.
Sanders, Robin R.
Smith, Gayle E.
Weinstein, Jeremy M
Benjamin, Daniel
Bobbitt, Philip C.
Clarke, Richard A.
Dollar, Carolyn J.
Fung, Mark T.
Gordon-Hagerty, Lisa E.
Green, Charles A.
Hawley, Leonard R.
Johnson, Anthony
Klein, Brian P.
McCarthy, Mary O.
Metzl, Jamie F.
Mulligan, George D.
Rosa, Frederick M.
Roundtree, Beverly
Schwartz, Eric P.
Simon, Steven N.
Sisson, Charlotte A.
Wechsler, William F.

TEXT_BODY

Scott - Just a few ticks. It is important to ote the sheer volume of refugees we are repatriating and to make clear our commitment that if Reed's amendment fails, we will work with INS to ensure proper education outreach on this issue. - Erica

-----Original Message-----
From: Busby,

COPY

Scott W.
Sent: Monday, August 03, 1998 9:50 PM
To: Barks-Ruggles,
Erica; Weinstein, Jeremy M
Cc: Schwartz, Eric P.
Subject: Liberians
[UNCLASSIFIED]

Here's a draft derived from Jeremy's excellent first draft. However, bottom line will be greatly affected by how Jesse comes out. Haven't gotten anything from his office yet but will call in the a.m.

TRANSLATED_ATTACHMENT Liberians.doc

INFORMATION

MEMORANDUM FOR THE PRESIDENT

FROM: SAMUEL BERGER

SUBJECT: Deportation of Liberians in the United States

This memo responds to your request for information on the status of Liberian citizens whose temporary legal status in the United States is scheduled to expire on September 28, 1998.

Temporary Protected Status: By statute, the Attorney General has authority to grant Temporary Protected Status (TPS), after consulting with the Secretary of State, to persons in the United States who have fled situations of civil strife, widespread violence or natural disaster. The Attorney General first granted TPS to Liberians on March 27, 1991 and has extended such status until recently. The Immigration and Naturalization Service (INS) estimates that approximately 8,000 Liberians in the United States currently benefit from such status.

Expiration of TPS: In March, the Attorney General announced that

COPY

35E3456F.FIN Page 3 of 3

TPS for
Liberians would expire on September 28, 1998. This decision was
based on a
recommendation from the Department of State that conditions in
Liberia are now
sufficiently stable to permit Liberians to return. Moreover, State is
now
providing a significant amount of funds to a repatriation program for
over
500,000 Liberian refugees in Africa and believes that a further
extension of TPS
would be inconsistent with and could detract from those repatriation
efforts.

Deferred Enforced Departure (DED): In addition to the Liberian
Ambassador's
request that you issue a stay of deportation, a number of non-
governmental
organizations and individuals have urged you to grant DED to
Liberians in the
United States. They contend that the situation in Liberia is still
relatively
unstable and that Liberians in the United States provide valuable
remittances to
the Liberian economy.

DED is based on your foreign affairs authority and is generally
reserved for
extraordinary circumstances where it is clearly in the foreign policy
interest of
the United States to delay the deportation of certain nationals. You
have used
DED twice: once in 1993 by extending an initial grant of such status
to
Salvadorans by President Bush, and most recently, in December of
last year by
granting it to Haitians for one year.

State is not in favor of your granting DED to Liberians for the same
reasons it
opposes a further extension of TPS. Justice is also skeptical about the
legal
basis for granting DED to Liberians here given that we are
encouraging Liberians
elsewhere to return home. Justice further points out that many of the
Liberians
who currently enjoy TPS may be able to apply for asylum or other
forms of
immigration relief. Some may qualify for these remedies. For those
who do not,

COPY

the adjudication process will provide them with adequate time to arrange for their return to Liberia.

Jesse Jackson's views ...

Legislation: Senator Jack Reed (D-RI) has attached a provision to the Commerce, State, Justice Appropriations bill that extends TPS for Liberians for one year.

Although we did not think that we could support this provision in light of

State's support for Liberian repatriation efforts, White House Legislative

Affairs has indicated to Senator Reed that we would not oppose it.

The prospects

for this provision are mixed. [check with Peter Jacoby]

Recommendation: Given the extensive support that State is providing for Liberian repatriation programs, we share State's concern about extending TPS or granting DED to Liberians. We are also concerned that there is not a sufficient legal basis for your granting DED.

Nevertheless, before publicizing our views, we believe we should wait to see

whether Senator Reed's amendment is successful. Should it succeed, there will be

no need for us to consider administrative action. Should it fail, we would not

favor administrative relief. In that case, we will work with INS to ensure an

aggressive public awareness program is undertaken to make Liberians aware that

they may be able to apply for other forms of relief upon the expiration of TPS.

This may result in grants of permanent status and, at the very least, will

provide Liberians with time to arrange for their return while their cases are

being adjudicated.

Concurrences by: Jamie Baker

cc: Vice President
Chief of Staff

COPY

Exchange Mail

6429

DATE-TIME 8/4/98 7:45:32 PM
FROM Busby, Scott W.
CLASSIFICATION UNCLASSIFIED
SUBJECT FW: Memo on Liberians [UNCLASSIFIED]
TO Barks-Ruggles, Erica
Weinstein, Jeremy M

CARBON_COPY

TEXT_BODY Howard Jeter just called me about this. Sounds like he and AF are now in favor of DED (even though they stand by their recommendation to terminate TPS). He is going to talk to PRM further to come up with a unified State position.

-----Original Message-----

From: Busby,
Scott W.
Sent: Tuesday, August 04, 1998 7:21 PM
To: Barks-Ruggles,
Erica; Weinstein, Jeremy M; Baker, James E.
Cc: @LEGAL - Legal Advisor;
@AFRICA - African Affairs
Subject: Memo on Liberians [UNCLASSIFIED]

Attached
is a revised Liberians memo. Please clear.

TRANSLATED_ATTACHMENT

Liberians.doc

INFORMATION

MEMORANDUM FOR THE PRESIDENT

FROM: SAMUEL BERGER

COPY

35E50444.FIN

SUBJECT: Deportation of Liberians in the United States

This memo responds to your request for information on the status of Liberian citizens whose temporary legal status in the United States is scheduled to expire on September 28, 1998.

Temporary Protected Status: By statute, the Attorney General has authority to grant Temporary Protected Status (TPS), after consulting with the Secretary of State, to persons in the United States who have fled situations of civil strife, widespread violence or natural disaster. The Attorney General first granted TPS to Liberians on March 27, 1991 and has extended such status until recently. The Immigration and Naturalization Service (INS) estimates that approximately 8,000 Liberians in the United States currently benefit from such status.

Expiration of TPS: In March, the Attorney General announced that TPS for Liberians would expire on September 28, 1998. This decision was based on a recommendation from the Department of State that conditions in Liberia are now sufficiently stable to permit Liberians to return. Moreover, State is now providing a significant amount of funds to a repatriation program for Liberian refugees in Africa and believes that a further extension of TPS would be inconsistent with and could detract from those repatriation efforts.

Deferred Enforced Departure (DED): In addition to the Liberian Ambassador's request that you issue a stay of deportation, a number of nongovernmental organizations have urged you to grant DED to Liberians in the United States. They contend that the situation in Liberia is still relatively unstable and that Liberians in the United States provide valuable remittances to the Liberian economy.

DED is based on your foreign affairs authority and is generally

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extraordinary circumstances where it is clearly in the foreign policy
interest of
the United States to delay the deportation of certain nationals. You
have used
DED twice: once in 1993 by extending an initial grant of such status
to
Salvadorans by President Bush, and most recently, in December of
last year by
granting it to Haitians for one year.

State is not in favor of your granting DED to Liberians for the same
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opposes a further extension of TPS. Justice is also skeptical about the
legal
basis for granting DED to Liberians here given that we are
encouraging Liberians
elsewhere to return home. Justice further points out that many of the
Liberians
who currently enjoy TPS may be able to apply for asylum or other
forms of
immigration relief. Some may qualify for these remedies. For those
who do not,
the adjudication process will provide them with adequate time to
arrange for
their return to Liberia.

Jesse Jackson's views ...

Legislation: Senator Jack Reed (D-RI) has attached a provision to the
Commerce,
State, Justice Appropriations bill that extends TPS for Liberians for
one year.
Although we did not feel that we could support this provision in light
of State's
support for Liberian repatriation efforts, we have indicated to Senator
Reed that
we would not oppose it. The prospects for this provision are mixed.
[check with
Peter Jacoby]

Recommendation: Given the extensive support that State is providing
for Liberian
repatriation programs, we share State's concern about extending TPS
or granting
DED to Liberians. We are also concerned that there is not a sufficient
legal
basis for your granting DED.

Nevertheless, before publicizing our views, we believe we should wait

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work
with INS to ensure that Liberians are aware that they may be able to
apply for
other forms of relief upon the expiration of TPS. This may result in
grants of
permanent status and, at the very least, will provide Liberians with
time to
arrange for their return while their cases are being adjudicated.

Concurrences by: Jamie Baker

2

cc: Vice President
Chief of Staff

TRANSLATED_ATTACHMENT Liberians DED BERGER.doc

August 4, 1998

ACTION

MEMORANDUM FOR SAMUEL R. BERGER

THROUGH: ERIC SCHWARTZ/GAYLE SMITH

FROM: SCOTT BUSBY/JEREMY WEINSTEIN

SUBJECT: Status of Liberians in the United States

Attached is a memorandum to the President on the attached subject.

Concurrence by: Jamie Baker

RECOMMENDATION

COPY

1

COPY

Exchange Mail

6430

DATE-TIME 8/5/98 5:18:26 PM
FROM Weinstein, Jeremy M
CLASSIFICATION UNCLASSIFIED
SUBJECT GS -- Liberian Refugees [UNCLASSIFIED]
TO Smith, Gayle E.

CARBON_COPY

TEXT_BODY

GS

Draft of SRB memo in almost final form for your info; could be raised at Senior Director meeting on Friday.

JMW

-----Original
Message-----

From: Weinstein, Jeremy M
Sent: Wednesday, August
05, 1998 5:13 PM
To: Busby, Scott W.
Cc: @AFRICA - African Affairs
Subject: FW:
Liberians Redux [UNCLASSIFIED]

scott.

here are our changes.

jeremy

-----Original
Message-----

From: Barks-Ruggles, Erica
Sent: Wednesday, August
05, 1998 4:54 PM
To: Weinstein, Jeremy M
Subject: FW: Liberians
Redux [UNCLASSIFIED]

Thanks Jeremy.

-----Original Message-----

COPY

From: Weinstein,
Jeremy M
Sent: Wednesday, August 05, 1998 4:40 PM
To: Barks-Ruggles,
Erica
Subject: FW: Liberians Redux [UNCLASSIFIED]

erica,

i
think we really need to suggest the drawbacks of granting DED in
this memo. otherwise, the decision seems obvious... and SRB may
follow JJ's advice w/o question... i can suggest scott use our language
from last night if you concur.

jeremy

-----Original Message-----

From: Busby,
Scott W.
Sent: Wednesday, August 05, 1998 4:31 PM
To: Barks-Ruggles,
Erica; Weinstein, Jeremy M
Cc: @AFRICA - African Affairs
Subject: Liberians
Redux [UNCLASSIFIED]

Please send me your comments ASAP.

TRANSLATED_ATTACHMENT Liberians.doc

INFORMATION

MEMORANDUM FOR THE PRESIDENT

FROM: SAMUEL BERGER

SUBJECT: Deportation of Liberians in the United States

This memo responds to your request for information on Liberians in
the United
States whose temporary legal status will expire on September 28,
1998 and what
might be done to help them.

COPY

Background: By statute, the Attorney General has authority to grant Temporary Protected Status (TPS) to certain nationals in the United States who have fled situations of civil war, natural disaster or danger. The Attorney General first granted TPS to Liberians on March 27, 1991 and has extended such status until recently. The Immigration and Naturalization Service (INS) estimates that approximately 8,000 Liberians in the United States currently benefit from TPS.

In March, the Attorney General announced that TPS for Liberians would expire on September 28, 1998. That decision was based on a recommendation from the Department of State that conditions in Liberia are now sufficiently safe to permit Liberians to return. Moreover, State is now providing a significant amount of funds to repatriation programs for over 500,000 Liberian refugees in Africa. Some at State believe that a further extension of TPS or granting DED would be inconsistent with and could detract from those efforts.

Options:

TPS Legislation: Senator Jack Reed (D-RI) successfully attached a provision to the Commerce, State, Justice Appropriations bill that would extend TPS for Liberians for one year. Although we did not think we could support this provision in light of the Attorney General's decision to terminate TPS and interagency agreement on that decision, White House Legislative Affairs indicated to Senator Reed that we would not oppose it. The Senate has now passed that bill with Reed's provision in it.

Deferred Enforced Departure (DED): The Liberian ambassador, numerous non-governmental organizations and a number of individuals have urged you to grant DED to Liberians in the United States because of the continuing

COPY

fragility
of the situation there. DED is based on your foreign affairs authority
and is
generally reserved for extraordinary circumstances where it is clearly
in our
foreign policy interest to delay the deportation of certain nationals.
You have
used DED twice: once in 1993 when you extended an initial grant of
such status
to Salvadorans by President Bush, and most recently, last December
by granting it
to Haitians for one year.

At present, there are widely differing views on the appropriateness of
DED for
Liberians. Jesse Jackson supports a grant of DED to Liberians on the
grounds
that: (1) it will facilitate the ongoing process of peace consolidation;
(2) the
macroeconomic infrastructure at present is inadequate to absorb a
sudden influx
of Liberians; and (3) many Liberians in the U.S. provide valuable
remittances to
family members in Liberia. Some at State agree with Jesse's view;
others believe
that a grant of DED would run counter to our repatriation efforts in
West Africa.

***** A grant of DED status will suggest that Liberians in the United
States, by
virtue of their being here, are in a different category than the West
African
refugees. Further, granting DED will set an uncomfortable precedent
for the use
of this authority, which has been used rarely and only in clear-cut
situations in
the past. In addition, Justice has concerns about the legal basis for a
grant of
DED to Liberians.

Public Education and Outreach: A third option would be to make a
concerted
effort to educate Liberians who currently enjoy TPS about the other
forms of
immigration relief for which they may be eligible. Justice informs us
that many
Liberians may be able to obtain permanent status in this way or, at the
very
least, delay their deportation while their applications for such relief
are
considered.

COPY

Next Steps: Should Senator Reed's provision be passed, it will not be necessary to take administrative action for Liberians. Thus, we believe we can hold off on announcing any such action until the fate of the amendment is clear. White House legislative affairs believes that we cannot oppose the amendment now, given their agreement with Reed, but may do so in conference. We should explore this option as extending TPS is contradictory to decisions already taken by the Executive Branch.

In the meantime, we will be meeting with State and Justice to develop a firm recommendation for you on next steps should Reed's amendment be unsuccessful. We plan to have such recommendation to you by mid-September so that it can be acted upon, if necessary, prior to the expiration of TPS.

Tab A Memorandum from Reverend Jesse Jackson

3

cc: Vice President
Chief of Staff

COPY

35E0DD08.FIN

6431

Exchange Mail

DATE-TIME 8/6/98 4:39:44 PM
FROM Busby, Scott W.
CLASSIFICATION UNCLASSIFIED
SUBJECT FW: POTUS memo on Deportation of Liberians [UNCLASSIFIED]
TO Kale, Dora A.

CARBON_COPY

TEXT_BODY

Disregard this one.

-----Original Message-----

From: Busby, Scott W.
Sent: Thursday, August 06, 1998 4:38 PM
To: Kale, Dora A.
Subject: FW: POTUS memo on Deportation of Liberians [UNCLASSIFIED]

Please prepare.

-----Original Message-----

From: DeRosa, Mary B.
Sent: Thursday, August 06, 1998 4:24 PM
To: Busby, Scott W.
Cc: @LEGAL - Legal Advisor
Subject: FW: POTUS memo on Deportation of Liberians [UNCLASSIFIED]

Clear with
one change to POTUS memo.

-----Original Message-----

From: Busby, Scott W.
Sent: Thursday, August 06, 1998 2:51 PM
To: @LEGAL - Legal Advisor
Subject: FW: POTUS memo on Deportation of Liberians [UNCLASSIFIED]

Still awaiting your clearance.

COPY

-----Original
Message-----
From: Busby, Scott W.
Sent: Wednesday, August 05,
1998 8:00 PM
To: @LEGAL - Legal Advisor; DeRosa, Mary B.
Cc: @MULTILAT
- Multilateral and Humanitarian Affairs
Subject: POTUS memo on
Deportation of Liberians [UNCLASSIFIED]

Could Mary or someone
else in Legal clear this info memo by first thing in the a.m.? Many
thanks.

TRANSLATED_ATTACHMENT 5446 BERGER memo.doc

August 6, 1998

ACTION

MEMORANDUM FOR SAMUEL R. BERGER

THROUGH: ERIC SCHWARTZ

FROM: SCOTT BUSBY

SUBJECT: Status of Liberians in the United States

Attached is a memorandum to the President on the above subject
responding to his
request for further information.

RECOMMENDATION

That you sign the attached memorandum.

Concurrence: Erica Barks-Ruggles, Mary DeRosa

Attachment

Tab I Memorandum to the President

Tab A Memorandum from Reverend Jesse Jackson to the President

1

COPY

INFORMATION

MEMORANDUM FOR THE PRESIDENT

FROM: SAMUEL BERGER

SUBJECT: Deportation of Liberians in the United States

This memo responds to your request for information on Liberians in the United States whose temporary legal status will expire on September 28, 1998 and what might be done to help them.

Background: By statute, the Attorney General has authority to grant Temporary Protected Status (TPS) to certain nationals in the United States who have fled situations of civil war, natural disaster or danger. The Attorney General first granted TPS to Liberians on March 27, 1991 and has extended such status until recently. The Immigration and Naturalization Service (INS) estimates that approximately 8,000 Liberians in the United States currently benefit from TPS.

In March, the Attorney General announced that TPS for Liberians would expire on September 28, 1998. That decision was based on a recommendation from the Department of State that conditions in Liberia are now sufficiently safe to permit Liberians to return. Moreover, State is now providing a significant amount of funds to voluntary repatriation programs for over 500,000 Liberian refugees in Africa and believes that a further extension of TPS would

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be
inconsistent with and could detract from those efforts.

Nevertheless, the Liberian ambassador, numerous non-governmental organizations and a number of individuals have urged you to grant a delay in deportation of Liberians with TPS because of the continuing fragility of the situation in Liberia.

Options:

TPS Legislation: Senator Jack Reed (D-RI) successfully attached a provision to the Commerce, State, Justice Appropriations bill that would extend TPS for Liberians for one year. Although we did not think we could support this provision in light of the Attorney General's decision to terminate TPS, White House Legislative Affairs indicated to Senator Reed that we would not oppose it. The Senate has now passed that bill with Reed's provision in it.

Deferred Enforced Departure (DED): DED is based on your constitutional foreign affairs authority and is generally reserved for extraordinary circumstances where it is clearly in our foreign policy interest to delay the deportation of certain nationals. You have used DED twice: once in 1993 when you extended an initial grant of such status to Salvadorans by President Bush, and most recently, last December by granting it to Haitians for one year.

Preliminary views differ on whether you should grant DED to Liberians. Reverend Jackson supports a grant of DED to Liberians for the reasons outlined in his attached memorandum. Some at State agree with Jesse's view; others believe that a grant of DED would run counter to our support for repatriation efforts in West Africa and would suggest that Liberians in the United States are in a different category than Liberians in West Africa. In addition, Justice has concerns about the use of DED in this case and might conclude that it is unavailable

COPY

once it has
a chance to review all of the facts.

Public Education and Outreach: A third option would be to make a concerted effort to educate Liberians who currently are protected by TPS about the other forms of immigration relief for which they may be eligible. Justice informs us that many of these individuals may be able to obtain permanent status or, at the very least, delay their deportation while their applications for such relief are considered.

Next Steps: We will be meeting with State and Justice as well as other relevant White House offices to develop a firm recommendation for you on what, if anything, we should do if Reed's amendment extending TPS is unsuccessful. We plan to have such recommendation to you by mid-September so that it can be acted upon, if necessary, prior to the expiration of TPS.

Tab A Memorandum from Reverend Jesse Jackson

2

cc: Vice President
Chief of Staff

COPY

Exchange Mail

6432

DATE-TIME 8/10/98 1:36:07 PM
FROM Weinstein, Jeremy M
CLASSIFICATION UNCLASSIFIED
SUBJECT FW: Information Memorandum for NSC [UNCLASSIFIED]
TO Barks-Ruggles, Erica

CARBON_COPY

TEXT_BODY here you go... final copy.

-----Original Message-----

From: Busby,
Scott W.
Sent: Wednesday, August 05, 1998 5:40 PM
To: Barks-Ruggles,
Erica
Cc: @AFRICA - African Affairs
Subject: Information Memorandum
for NSC [UNCLASSIFIED]

Further changes. Can't be more than
two pages..

TRANSLATED_ATTACHMENT

Liberians_.doc

INFORMATION

MEMORANDUM FOR THE PRESIDENT

FROM: SAMUEL BERGER

SUBJECT: Deportation of Liberians in the United States

This memo responds to your request for information on Liberians in
the United
States whose temporary legal status will expire on September 28,

COPY

1998 and what might be done to help them.

Background: By statute, the Attorney General has authority to grant Temporary Protected Status (TPS) to certain nationals in the United States who have fled situations of civil war, natural disaster or danger. The Attorney General first granted TPS to Liberians on March 27, 1991 and has extended such status until recently. The Immigration and Naturalization Service (INS) estimates that approximately 8,000 Liberians in the United States currently benefit from TPS.

In March, the Attorney General announced that TPS for Liberians would expire on September 28, 1998. That decision was based on a recommendation from the Department of State that conditions in Liberia are now sufficiently safe to permit Liberians to return. Moreover, State is now providing a significant amount of funds to repatriation programs for over 500,000 Liberian refugees in Africa. State believes that a further extension of TPS would be inconsistent with and could detract from those efforts.

Options:

TPS Legislation: Senator Jack Reed (D-RI) successfully attached a provision to the Commerce, State, Justice Appropriations bill that would extend TPS for Liberians for one year. Although we did not think we could support this provision in light of the Attorney General's decision to terminate TPS and interagency agreement on that decision, White House Legislative Affairs indicated to Senator Reed that we would not oppose it. The Senate has now passed that bill with Reed's provision in it.

Deferred Enforced Departure (DED): The Liberian ambassador, numerous non-governmental organizations and a number of individuals have

COPY

urged you to grant DED to Liberians in the United States because of the continuing fragility of the situation there. DED is based on your constitutional foreign affairs authority and is generally reserved for extraordinary circumstances where it is clearly in our foreign policy interest to delay the deportation of certain

nationals. You have used DED twice: once in 1993 when you extended an initial grant of such status to Salvadorans by President Bush, and most recently, last December by granting it to Haitians for one year.

At present, there are widely differing views on the appropriateness of DED for Liberians. Jesse Jackson supports a grant of DED to Liberians for the reasons outlined in his attached memorandum. Some at State agree with Jesse's view; others believe that a grant of DED would run counter to our support for repatriation efforts in West Africa and would suggest that Liberians in the United States are in a different category than Liberians in West Africa. In addition, Justice has serious concerns about the use of DED generally and is not convinced at present that there is an adequate legal basis for granting such status to Liberians.

Public Education and Outreach: A third option would be to make a concerted effort to educate Liberians who currently enjoy TPS about the other forms of immigration relief for which they may be eligible. Justice informs us that many Liberians may be able to obtain permanent status in this way or, at the very least, delay their deportation while their applications for such relief are considered.

Next Steps: Should Senator Reed's provision pass, it will not be necessary to take administrative action for Liberians. Thus, we believe we can hold off on announcing any such action until the fate of the amendment is clear.

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In the meantime, we will be meeting with State and Justice to develop a firm recommendation for you on next steps should Reed's amendment be unsuccessful. We plan to have such recommendation to you by mid-September so that it can be acted upon, if necessary, prior to the expiration of TPS.

Tab A Memorandum from Reverend Jesse Jackson

2

cc: Vice President
Chief of Staff

COPY

Withdrawal/Redaction Sheet

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. email	Caroline Kraass to James Baker re: Human Rights Bill (3 pages)	03/22/2000	P5 6434
002. email	Richard Norland to Mary DeRosa and Daniel Shaprio, re: JBS-Gilman Meeting (8 pages)	07/13/2000	P1/b(1), P5
003. email	Richard Norland to Douglas Bayley, re: "Food for Thought" (6 pages)	07/14/2000	P1/b(1), P5
004. email	Richard Norland to Richard Norland and Bathsheba Crocker, re: "Food for Thought" (6 pages)	07/17/2000	P1/b(1), P5
005. email	Justin Siberell to Mary DeRosa, re: [Update for SRB] (6 pages)	08/09/2000	P1/b(1), P5
006. email	Richard Norland to Antony Blinken, et al., re: [Update for SRB] (6 pages)	08/10/2000	P1/b(1), P5
007. email	Roger Merletti to Caryn Hollis, re: Draft - Fox Briefing and Talkers (9 pages)	08/11/2000	P1/b(1)
008. email	Roger Merletti to Daniel Shapiro, re: Draft Briefing Package for Visit of Mexican Pres-elect Fox (11 pages)	08/14/2000	P1/b(1)
009. email	Donna Lieberman to Lee Wolosky, re: Draft Briefing Package for Visit of Mexican Pres-elect Fox (11 pages)	08/14/2000	P1/b(1)
010. email	Caryn Hollis to Roger Merletti, re: Draft - Fox Briefing and Talkers (9 pages)	08/14/2000	P1/b(1)

COLLECTION:

Clinton Presidential Records
 NSC Emails
 Exchange - Non-Record (Mar 97 - Jan 01) ([Immigration and Naturalization])
 OA/Box Number: 630000

FOLDER TITLE:

[01/12/2000 - 08/14/2000]

2011-1044-F
 ke1401

RESTRICTION CODES

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

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

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

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

RR. Document will be reviewed upon request.

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

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

6434

Exchange Mail

DATE-TIME 03/22/2000 9:33:02 AM
FROM Krass, Caroline D. (LEGAL)
CLASSIFICATION UNCLASSIFIED
SUBJECT RE: Human Rights Bill [UNCLASSIFIED]
TO Baker, James E. (LEGAL)

CARBON_COPY

TEXT_BODY

Thanks.

-----Original Message-----

From: Baker, James E. (LEGAL)

Sent: Tuesday, March 21, 2000 7:25 PM

To: @LEGAL - Legal Advisor

Subject: Human

Rights Bill [UNCLASSIFIED]

CK: If you agree with the additional comments, please send to Wendy with the deletion of sub para 4.
Thanks.

As we discussed, we have the following comments on the Justice draft bill:

Substance:

1. Sections 2(a) and 3(a) of the bill amend the INA to deny most immigration benefits to "human rights abusers." What would be a new section 212(a)(2)(F)(i)(V) and section 237(a)(7)(A)(vi) would include in that definition any alien "who has ordered, incited, assisted, or otherwise participated in a crime against humanity including the commission of murder, extermination, enslavement, deportation, imprisonment, torture, rape, sexual slavery, forced prostitution, forced pregnancy, forced sterilization, or acts of a similar character, when committed as part of a widespread or systemic attack, whether international or internal in character, and directed against any civilian population."

The section-by-section analysis of the bill explains that this definition "does not require a policy or proof of the individual's knowledge" that his or her single proscribed act was part of a widespread or systemic attack.

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Deleting

the knowledge requirement seems to go too far. It suggests that were an immigration official to deport someone that official would be a "serious human rights abuser" if it turned out that the deportation fit within a widespread or systemic attack on people of the deportee's ethnicity, even if the official did not know of the systemic attack. I therefore recommend that the word knowingly be inserted as indicated below:

"... when knowingly committed as part of a widespread or systemic attack, whether international or internal in character, and directed against any civilian population."

2. Section

4: Designation of Foreign Entities. Presumably, this includes foreign governments. It is worth testing in the interagency the benefits of this section against the potential risk that it will become something of a drug certification process. We may also find ourselves in the endless cycle of having to consider whether to put allies in the human rights box. Again, as below, this is not a judgment that we should not do so, but it may not always be the most effective method to address these concerns.

3. The sectional analysis in the paragraph before (IV) addresses the Protocol on Restrictions on the Use of Mines, booby Traps and Other Devices, and states that "when the United States ratifies such protocol." It is always risky business to presume Senate advice and consent to ratification, unless this is, in fact, a reference to deposit of the instrument of ratification alone. We recommend that you confer with Anne Witkowsky on just how this Protocol should be addressed in this section.

[4. We will want

to make sure with Justice that the legislation in fact does what we think it does with respect to foreign persons who commit war crimes. The definition of war crime is pegged to 18 U.S.C. 2441(c). That statute contains both a definition of war crime and a limitation under "circumstances" that only applies the statute in circumstances where the victim of the war crime is a U.S. national or the war crime is committed by a U.S. national.] NOT NECESSARY FYI I THOUGHT ABOUT

THIS AND DELETED BECAUSE THE REFERENCE IS TO (c) alone.

Process:

State: It is my understanding that State/L is providing comments on the legislative proposal, including the portion of the section-by-section analysis relating to "war crimes." Could you please ask OMB to send

COPY

us a copy of those comments.

CIA: We have also communicated directly to OMB that CIA should have an opportunity to review this legislation. The legislation and sectional analysis does not make clear how this provision meshes with existing INA authority to bring in defectors and naturalize persons who have made extraordinary contributions to national security. Specifically, whether this provision would bar the AG from admitting a defector or agent who might otherwise be inadmissible under this legislation. This is not a judgment that we should let such persons in, but we should not support legislation that would rule this possibility out. You would not want to turn Penkovsky away at the door. Or turn away his information if his price is eventual naturalization. This argument can open too wide a door, but the point is not to give up essential discretion. We can put this same question to Justice, but it is essential that CIA buy into the solution so that they do not work outside the process to "correct" a perceived problem.

JCS: Given the extensive discussion of war crimes and the law of armed conflict in the sectional analysis, we will want to ensure that OMB has sought and obtained a full and meaningful JCS clearance. We will cross check with the Chairman's Legal Counsel.

COPY

Withdrawal/Redaction Sheet

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. memo	Samuel Berger et al to President Clinton re: Response to Congress (2 pages)	07/15/1997	P5 6435
002. memo	Samuel Berger and John Hilley to President Clinton (2 pages)	04/07/1997	P5 6436

COLLECTION:

Clinton Presidential Records
NSC Records Management
[Immigration and Naturalization]
OA/Box Number: 1603

FOLDER TITLE:

9701235 [1]

2011-1044-F
ds365

RESTRICTION CODES

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

- P1 National Security Classified Information [(a)(1) of the PRA]
- P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
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THE WHITE HOUSE

WASHINGTON

ACTION

July 15, 1997

97 JUL 15 PM 4:55

MEMORANDUM FOR THE PRESIDENT

FROM:

SAMUEL BERGER *SB*
 CHARLES F. C. RUFF *CR*
 JOHN HILLEY *John Hilley*
 THURGOOD MARSHALL, JR. *TM*

SUBJECT:

Response to Congress Regarding the IRA Deportation
 Cases

Purpose

You asked whether we had options concerning the handling of IRA deportation cases (Tab A). Immigration law provides little flexibility on these cases because of the individuals' terrorist connections. Only a strong foreign policy rationale -- which we do not see at this time -- would provide an acceptable basis for intervening with the Justice Department on their handling of these cases.

Background

The Irish caucus has an interest in about a dozen IRA deportation cases, which have two common characteristics: (1) each individual has been convicted of a terrorist-related offense in the UK. Convictions include murder, attempted murder, and various firearms/explosives charges; (2) each individual has been living in the United States for some time now, and has an American family.

The legal relief potentially available to these individuals is very limited. The ordinary relief for individuals married to Americans -- adjustment of status -- is not available to individuals being deported on terrorist or aggravated felony grounds. A grant of asylum requires a showing of likely persecution in both northern Ireland and southern Ireland; suspension of deportation requires ten years presence in the United States and a showing that deportation would work "exceptional and extremely unusual" hardship. Recent changes in immigration law make relief even less likely in the future. Prospectively, neither asylum nor suspension of deportation will be available to individuals being deported on terrorist grounds. Despite the difficult standards, a few of the individuals have won relief during the deportation process. However, others are working their way through the process toward deportation.

cc: Vice President
 Chief of Staff

COPY

The Attorney General has reviewed these cases and concluded that the individuals are being treated fairly under our law. The Executive Branch does have "prosecutorial discretion" over which immigration cases to bring. However, DOJ/INS argue that failing to pursue these cases would be inconsistent with our emphasis on removal of criminal aliens, and would also exacerbate claims of "selective prosecution" by Arab aliens we are seeking to deport on terrorism grounds.

You could, by Executive order, "defer deportation" of these individuals. President Bush did so for Chinese students for two years after Tienanmen Square. However, we would need a strong rationale for treating these cases differently from other criminal aliens facing deportation. (While the humanitarian situation of these families is sympathetic, that is frequently true in deportation cases.) One possible basis would be promotion of an important foreign policy interest. However, absent unequivocal IRA commitment to a cease-fire, we do not see a basis for recommending consideration of this option (which would be difficult in any event, given the pressure from Latin American presidents over the implementation of other aspects of the new immigration law).

Absent a compelling foreign policy interest, we continue to believe that Congressional inquiries on these active cases, each of which is in some stage of litigation, should be referred to the Attorney General. Congress, of course, could provide relief to these individuals through private relief bills.

RECOMMENDATION

That we maintain our current approach of referring congressional inquiries on these deportation cases to the Attorney General.

Approve _____ Disapprove _____

That you authorize the release of letters to Members pending with Staff Secretary's Office see sample at Tab II.

Approve _____ Disapprove _____

Attachments

Tab II Letter to Ad Hoc Committee
Tab III Incoming

COPY

4-9-97

1235

THE WHITE HOUSE
WASHINGTON

April 7, 1997

ACTION

MEMORANDUM FOR THE PRESIDENT

FROM: SAMUEL BERGER
JOHN HILLEYSUBJECT: Response to Members of Congress Regarding the
Irish Deportation Cases

Do we have
any options?
is this really
good policy now?
let's discuss
BG

Purpose

To respond to a number of Members of Congress who have urged that you meet with a delegation of the Ad Hoc Committee for Irish Affairs and that you intervene in the ongoing deportation cases of several Irish nationals.

Background

The Congressional Ad Hoc Committee for Irish Affairs has been looking into the Immigration and Naturalization Service's (INS) handling of the cases of several Irish nationals being processed for deportation. The Attorney General reviewed these cases and concluded they were being handled appropriately and in accordance with statutory guidelines. Last month, the Committee held a hearing on these cases and took testimony from INS officials, practicing immigration lawyers, Irish-American advocacy groups and family members of the Irish nationals being processed.

In January, thirty Members of the Committee wrote asking you to intervene in the case of Matt Morrison, one of those being processed for deportation. Sandy Berger responded to this letter by indicating that the case was being processed in accordance with statutory requirements and referred them to the Attorney General. The Committee has since written back insisting that you review their letter regarding Morrison and the issues therein.

About sixty Members of this same Committee have also sent an additional letter imploring you to intervene in all of the cases and to meet with a delegation of the Ad Hoc Committee. In addition, Senators Dodd and D'Amato have recently written asking that you meet with this same delegation.

PHOTOCOPY
WJC HANDWRITINGcc: Vice President
Chief of Staff

COPY

Each of the deportation cases presents difficult humanitarian considerations, since the deportees now have American wives and children. However, the individuals are being deported because of their past involvement in serious crimes (usually in connection with the IRA). The statutory requirements applicable to these cases have been tightened by Congress in recent years and make relief unlikely, notwithstanding the difficult situations for the families.

These cases are all active cases under the purview of the Attorney General. Therefore, we recommend against meeting with the delegation. The proposed response refers the Ad Hoc Committee and the Senators to the Attorney General for further discussions of the cases.

RECOMMENDATION

That you sign the attached responses.

Attachments

Tab A Response to Ad Hoc Committee

Tab B Incoming Correspondence (Packages 1235, 1900, 1913)

PHOTOCOPY
WJC HANDWRITING

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