Withdrawal/Redaction Sheet
Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION	
001. note	To Carol Rasco from N.H. re: HUD (1 page)	n.d.	P5	
002. list	Re: HUD-New Hampshire (1 page)	n.d.	P5	
003. fax	To Nancy Hernreich from Hal Hunnicutt re: Florida lawsuit against HUD (1 page)	03/22/94	P5, P6/b(6)	
004. note	Re: HUD, Hal Hunnicutt (1 page)	n.d.	P5	
005. letter	To POTUS from Hal Hunnicutt re: HUD (1 page)	03/04/94	P5	4005
006. letter	To POTUS from Hal Hunnicutt re: HUD (3 pages)	2/12/94	P5, P6/b(6)	
007. note	For POTUS re: HUD, Hal Hunnicutt (1 page)	n.d.	P5	4006
008. fax	To Nancy Hernreich from Hal Hunnicutt re: Henry Cisneros (1 page)	05/12/94	P5, P6/b(6)	

COLLECTION:

Clinton Presidential Records
Domestic Policy Council
Carol Rasco (Meetings, Trips, Events)
OA/Box Number: 5040

FOLDER TITLE:

Telephone Meeting: Secretary Cisneros (will call) 6-1-94 2:30-2:45

Rhonda Wilson

rw172

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 advise 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]

3-4-94

Cosco

cc
L.W.

Bill -

Please recall & send back to HUD the "Wind rule" for Zones II & III for further review of the economic impact of the final rule of the Industry, it's employees, and lower income consumers. This could cost thousands of jobs in these areas.

Also, check into the availabilty of alternate forms of housing, for the lower economic sector, who would no longer be able to afford manufactured Housing. This includes vast minorities, especially in the Carolinas and Texas. Please give this strong consideration, as I know you will. I see no way it can hurt you politically. You are only trying to make sure that we don't totally close the "American Dream" to our citizens on a knee jerk reaction by Cisneros & Staff at HUD. This rule in no way assures anyone of inhabiting a "Hurricane Safe" residence.

Your Friend

Hal

(3) **FYI only.** Hal Hunnicutt sent me a note. He is still livid about Henry Cisneros' decision about manufactured housing and wants you to know that he thinks Cisneros has turned his back on his own people and was a poor choice for HUD.

cc: Rasco

dp

Withdrawal/Redaction Sheet
Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. memo	For Carol Rasco from Robert S. Litt and Dawn Johnsen re: Florida Health Security/Anti-Kickback Statute (3 pages)	08/05/94	P5
002. memo	To LeeAnn Inadomi and Tod Stern from Carol Rasco re: Letter to Graham and Gibbons (1 page)	08/08/94	P5
003. memo	For Leon Panetta from Carol Rasco re: Request from Governor Chiles (2 pages)	08/04/94	P5
004. note	Handwritten Note re: Florida (1 page)	08/01/94	P5
005. memo	For Leon Panetta from Carol Rasco re: Request from Governor Chiles (copy of #3) (2 pages)	08/04/94	P5
006. memo	For the President from Carol Rasco re: Florida Waiver w/attachment (6 pages)	07/21/94	P5 4007
007. memo	For the President from Carol Rasco re: Florida Waiver w/attachments (4 pages)	07/21/94	P5 Dup
008. memo	For the President from Christine Varney re: Summary of Weekly Cabinet Reports July 15, 1994 through July 22, 1994 (8 pages)	07/15/94	P5 4008
009. memo	For the President from Carol Rasco re: Waivers (1 page)	07/24/94	P5 4009
010. memo	To Kevin Thurm from Michael Wald, Deputy General Counsel re: Beno v. Shalala (2 pages)	07/22/94	P5
011. memo	To Katherine L. Darwin from Carol Rasco re: Florida Waiver (1 page)	07/21/94	P5

COLLECTION:
Clinton Presidential Records
Domestic Policy Council
Carol Rasco (Meetings Trips Events)
OA/Box Number: 5041

FOLDER TITLE:
Florida Waiver Briefing 5 August 1994 10:00-10:30

rw196

THE WHITE HOUSE

WASHINGTON

MEMORANDUM FOR THE PRESIDENT

FROM: Carol H. Rasco CHR

SUBJ: Florida waiver

DATE: July 21, 1994

Immediately after receiving the memo which I then passed along to Bruce for you on the Florida waivers issues, I gave the memo to Lloyd Cutler and told him I would appreciate the help of General Counsel's office here on the matter since I felt it would be highly inappropriate for me and/or others in the White House to intervene with Justice and/or the IG at HHS.

Lloyd and Joel have been working on the matter, and they report to me that they are making progress with the Justice Dept. on the matter. I am getting daily and sometimes twice daily updates.

Governor Chiles had his staff call me yesterday as Governor McWherter had convinced him he had to work with Carol Rasco to get a waiver (my good friend, Ned Ray). I have assured Governor Chiles and his staff that General Counsel is working diligently on the matter. Governor Chiles was very pleased with that news, and I will be calling the Governor's office or his DC office each morning. The Governor is aware we do not negotiate the terms here, but that we are making sure all angles are pursued by those actually reviewing the matter.

One other waiver note: I have given our General Counsel's office the notes I have to date on the Ninth Circuit decision and have asked them to become fully briefed on the matter in order to help us work with HHS as HHS makes a decision on the various pieces of that issue.

Thank you.

THE PRESIDENT HAS SEEN
7. 20. 94

[illegible] —
we need to
discuss - Rio &
+ Big deal —

Carol Rasco wanted you to see this before you meet with Governor Chiles

July 15, 1994

Bruce

STATUS OF HCFA NEGOTIATIONS ON THE FLORIDA WAIVER

The State of Florida is seeking a waiver to implement the Florida Health Security (FHS) program, which would provide insurance to 1.1 million uninsured persons at or below 250% of the poverty level.

After several weeks of discussion, HCFA and the State have resolved a large number of issues. There are now two issues outstanding:

o <u>Budget Neutrality</u>: We are endeavoring to agree on a methodology to ensure that Florida spends no more under the waiver than it would have in the absence of a waiver. This would essentially create a cap on Medicaid spending. HHS and OMB have been concerned that Florida's estimate of what they would spend in the absence of a waiver is too high, creating a significant Federal budget risk. The President raised this issue with the Governor at their meeting last month.

  In computing the baseline costs that determine the spending cap, the State insists on using an estimate of the future growth rate rather than actual growth. However, the growth rate has slowed substantially in the past year, from 21% to 14% or even less. On Thursday, HCFA offered to lock in a 17.75% growth rate, which would be a favorable arrangement for the State. The State had been insisting on 18.5% and has not yet responded to this offer.

  Should Florida reject this offer, HCFA is prepared to make the State another offer using an alternate methodology.

o <u>Use of Insurance Agents</u>: Florida plans to use insurance agents to sell health plans under its FHS program. However, the Justice Department has indicated that Florida's plan would violate the Medicare/Medicaid anti-kickback statute. This statute addresses the policy concern that insurance plans could out-bid one another in offering remuneration of commissioned agents, and result in Medicaid patients being "steered" to plans offering the most lucrative commissions to the agent. There is considerable Congressional interest in this issue, with Rep. Waxman investigating whether some abusive, high-profit Medicaid managed care plans obtain enrollees by offering high commissions.

According to Carol, this is a sticking point.

  Florida continues to argue that their plan does not violate the law. The Justice Department and the HHS Inspector General are once again explaining our position to the State.

The Secretary does have the authority to create a safe harbor from the statute, in "consultation" (interpreted by DOJ and OMB as "approval") with the Attorney General, if the HHS IG finds that the plan in question does not raise fraud and abuse concerns. We do not believe that the Justice Department or the HHS IG are prepared to make such an assurance at this time. In addition, issuing a safe harbor regulation for Florida would take several months at least, since it would require a proposed rule in the Federal Register, a public comment period, and a final regulation that responds to public comments. Such a timetable would be a problem for Florida.

It appears that Florida must alter their plan in order for it to be judged acceptable by the HHS IG and Justice, but they have so far shown no flexibility in doing so, citing political concerns.

Carol H. Rasco - Call List

CALLER	DATE/TIME	MESSAGE	FOLLOW-UP	DISPOSITION
Debbie Kilmer Gov. Chiles office (202)624-5885	8-4 9:35am	- Florida is writing terms & conditions to describe the premium		
		+ HHS very uncomfortable w/ safe harbor		
		+ McKay = was confused		
		+ Chiles in town next week w/ Panetta		
		Chiles here all day Tues - would stay over Tues night for Wed.		

Next week:
Tues before 10 a.m.
Tues. after 8 p.m.
Mon. - in at 8:30 p.m.
Tues. 12 noon

Carol H. Rasco - Call List

CALLER	DATE/TIME	MESSAGE	FOLLOW-UP	DISPOSITION
John Monahan 690-6060	8-1 11:10am	re: Your conversation with Jill on Florida. John's understanding is that HHS is waiting for submission of the outstanding proposal from Florida. However, Jill says your conversation with Florida concluded that they are expecting a response from HHS on the Safe Harbor Regulation. Please call for clarification.		

THE WHITE HOUSE

WASHINGTON

July 15, 1994

MEMORANDUM FOR THE PRESIDENT

FROM: CHRISTINE A. VARNEY
Secretary to the Cabinet

SUBJECT: Summary of Weekly Cabinet Reports
July 15, 1994 through July 22, 1994

CABINET-WIDE ACTIVITY

SOUTHEASTERN FLOODS

Recovery from the southeastern floods continues. Members of the Administration continue to travel to the region to follow up your successful visit Wednesday, to ensure that the federal response continues to be effective and to provide appropriate grants and loans. Secretary Pena and Administrator Bowles are in Georgia today.

HEALTH CARE SUMMARY

This week, members of the Cabinet and their Chiefs of Staffs participated in a two hour health care strategy session led by Leon Panetta, Harold Ickes, and Pat Griffin. Over the next two weeks, the Cabinet will take part in an ambitious schedule of over 100 editorial board briefings, reaching out to newspapers in every major city in the country. At the end of the month, the Cabinet will travel on the Health Security Express bus tour organized by allied groups.

CRIME BILL

The Attorney General is actively engaged in discussions with Members of Congress, especially the Congressional Black Caucus Members, regarding the conference report. In addition, she is participating in crime media and events, including a community policing event this weekend in Richmond and a speech to the National Organization of Black Law Enforcement Officers. Director Lee Brown will also address the group this weekend. In addition, between today and Tuesday, Secretaries Reich and Cisneros are conducting interviews with major newspaper editorial boards in the districts of Congressional Black

Caucus Members. Secretary Reich traveled to Chicago today to participate in an event highlighting the youth programs in the bill.

SCHOOL-TO-WORK

Today, the Departments of Labor and Education jointly announced first-year awards to states for implementation of School-to-Work programs within the next few days. The following states are receiving awards: Kentucky, Massachusetts, Michigan, New Jersey, New York, Oregon, Maine and Wisconsin.

** ** ** **

DEPARTMENT SUMMARIES

Department of Commerce

- **Diversity Plan:** Secretary Brown will announce Commerce's major new Diversity Plan geared to effect short-term and long-term changes within the Department. The results-oriented Plan is the product of months of study and discussion. Minority constituencies have been vocal regarding diversity concerns in the Administration and specifically at Commerce.

- **Economic Development Administration (EDA) Grants:** Commerce's EDA will announce a total of $4.5 million in economic development grants next week.

Department of Transportation

- **Haiti:** Transportation's Haitian interdiction process rescued 6,361 people during 136 interdictions this week. Since the Migrant Processing Center was activated last month, more than 19,000 Haitian immigrants have been interdicted. Over one thousand vessels have been boarded and 114 diverted.

- **Soo Line Strike:** On July 14, the United Transportation Union initiated a strike against the Soo line Railroad. Neither side is interested in federal intervention at this time.

Department of Justice

- **Fax Paper Price Fixing Case:** Yesterday, the Department filed its first case in its ongoing criminal investigation of price fixing by Japanese and American fax paper suppliers. These cases are significant because they include pleas by a Japanese corporation and a Japanese national, involve fines totaling more than $6.5 million,and are the culmination of a joint investigation by U.S. and Canadian antitrust authorities.

- **Gasoline Suit:** The American Petroleum Institute has informed the Environmental Protection Agency that it intends to challenge the Agency's renewable oxygenate requirement for reformulated gasoline.

Health and Human Services

I need some brief'g on this — We must not stop waivers

HR sent 7/21 note to POTUS

- **Court of Appeals Orders HHS to Reconsider Waiver:** On July 12, the U.S. Court of Appeals held that the Department failed to comply with the Administrative Procedures Act when, in 1992, it approved a welfare waiver for California. The court ordered the Department to reconsider the proposed demonstration, the core element of which is a 6.3% reduction in AFDC benefits. In addition to the implications with respect to California, the decision is relevant to current deliberations regarding proposed Department policies and procedures for reviewing waiver requests.

Why

- **Household Survey of Drug Abuse Results to be Released:** On July 20, Director Lee Brown and Secretary Shalala will hold a press conference to announce the findings of the Household Survey of Drug Abuse, conducted by the Substance Abuse and Mental Health Services Agency. The survey shows that rate of illicit drug use has remained flat during the 1990s, with roughly 11.7 million Americans reporting use in 1993. However, the number of people who use cocaine on a weekly basis, 500,000, is at its highest level since 1985.

- **Florida Medicaid Waiver:** The Department is in its final stages of negotiations with Florida on their request to implement the Florida Health Security Program through a waiver. Florida's program would provide insurance to 1.1 million uninsured persons at or below 250 percent of the poverty level. Significant remaining issues are budget neutrality and the state's plan to use insurance agents to sell policies:

    - Budget Neutrality: The Department is seeking agreement on a methodology to ensure that Florida spends no more under the waiver than it would have in the absence of a waiver. The Department has been concerned that Florida's estimate of what they would spend in the absence of a waiver is too high and entails a significant budget risk. HCFA and Florida are discussing options and hope to reach an agreement soon.

Don't let them stop it

CHR sent 7/21 note to POTUS

    - Use of Insurance Agents: Florida plans to use insurance agents to sell health plans under its Florida Health Security program. The Justice Department has indicated that Florida's plan would violate the Medicare/Medicaid anti-kickback statute. There is, however, a Departmental process by which a safe harbor could be created by regulation after a finding that there is no danger of fraud and abuse in the plan. The Department is examining this issue closely.

- **HCFA Investigation of Humana:** The Health Care Financing Administration has initiated an investigation of Humana Medical Plan, Inc., in its South Florida and Tampa markets. The investigation is focused on Humana's ability to meet statutory requirements related to quality, access, and management. The investigation is based on complaints submitted by plan members, HCFA's analysis of Peer Review Organization (PRO) data identifying problems, and the PRO's concerns about Humana's reactions to confirmed quality problems. Humana has been notified of the investigation. Problems with health maintenance organizations in South Florida have been receiving extensive media coverage recently.

- **NIH Meeting on Cooperative Research and Development Agreements:** On Thursday, July 21, the National Institutes of Health will sponsor a public meeting focusing on the Cooperative Research and Development Agreements that NIH routinely approves with private industries to speed technology transfer. These agreements contain "reasonable pricing" clauses for newly-approved drugs and technologies. Last week, the Regulation, Business Opportunities and Technology Subcommittee (chaired by Representative Ron Wyden) of the House Small Business Committee heard testimony that drugs developed with federal funds are often priced much higher than those developed with industry funds due to lack of federal oversight. This subject is likely to be revisited during the NIH public hearing.

- **AIDS Transmission through Artificial Insemination:** *People* magazine is developing an article on the transmission of the HIV virus through artificial insemination. According to the Centers for Disease Control and Prevention, there is the possibility that seven cases of HIV in the United States are attributable to the artificial insemination of contaminated semen. CDC has in place strict guidelines concerning the testing of donated semen for the HIV virus. The Department does not know when this story might run.

Housing and Urban Development

Hug
was
doing it
too!

- **Innovative Homeless City in Miami:** On Monday, Secretary Cisneros will participate in an event to launch the Innovative Cities Program in Miami. HUD will provide $15 million, which will be combined with local resources to provide a "continuum-of-care" system to move homeless people into permanent housing in Miami. This program is unique in that it is performance-based; Miami will have to repay the HUD funds unless it can demonstrate reductions in measurable criteria concerning homelessness. You will mention this new program in your *Miami Herald* editorial board meeting.

Veterans Affairs

- **World War II Civilian Support Crews granted veteran status:** This week, Secretary Brown announced that two World War II civilian groups that provided critical support to U.S. military efforts during World War II have been granted veterans status. Based on a recent decision by the Secretary of the Air Force, civilian flight crew and ground support employees of Northwest Airlines who served overseas under a contract with the military, and U.S. civilian employees of the U.S. Army Nurse Corps who served in the defense of Bataan and Corregidor are now potentially eligible for veterans benefits.

- **Veterans Persian Gulf War Benefits Act:** On Thursday, July 21, the House Veterans Affairs Committee will mark up the bill that would provide compensation to Persian Gulf veterans with undiagnosed illnesses.

Environmental Protection Agency

- **Common Sense Initiative:** On Wednesday, July 20, Administrator Browner will formally launch the Common Sense Initiative. This program is an effort to fundamentally change the way EPA carries out environmental protection in the country by bringing together industry, environmentalists, state and local governments and other stakeholders to redesign regulation on an industry-by-industry basis. The goal is to achieve better environmental protection at less cost to industry.

- **Superfund:** Speaker Foley made clear this week in his intention to bring the Superfund reform bill to the House floor prior to the August recess. EPA has received signals from the Senate that it intends to bring the bill to the floor shortly after the August recess.

Department of Energy

- **India Trip:** Secretary O'Leary reports that her trip to India made extraordinary progress in the areas of government-to-government relationships, job creation, competitiveness, sustainable development and environmental protection. Eleven new private sector ventures were concluded during the visit. Including an agreement between Solec International of California and Pentafour Solec Technology Limited of India that created 150 new jobs in California and will provide non-polluting power sources to India. Secretary O'Leary will forward a detailed report on the trip upon her return.

- **Energy Policy Act Controversy Regarding Foreign Firms:** The Energy Policy Act includes a provision that establishes criteria by which foreign firms can compete for DOE research and development funds. The provision sets forth employment, manufacturing and investment criteria, and the country in which the firm is incorporated must provide U.S. with firms similar opportunities. The Department has permitted a foreign-owned firm to compete in an eight-year $700 million gas turbine program -- an action which was opposed by several prominent Members of Congress. The National Economic Council and the Council of Economic Advisors have chaired two meetings with the Department and other affected agencies; all parties support the decision as consistent with Administration economic and trade policy.

Department of Agriculture

- **Pathogen Reduction Legislation:** The Department's proposed Pathogen Reduction legislation is likely to receive interagency clearance next week and will immediately be sent to Congress. The proposal contains many significant new authorities, such as mandatory recall, civil penalties and traceback that will strengthen the overall food safety efforts at the Department. There is intense Congressional, consumer and industry interest in the proposal, which will be the subject of a hearing before Senator Daschle's subcommittee next week.

- **Crop Insurance Reform:** Next week, a controversial amendment to the Crop Insurance Reform bill is expected to be offered by Congressman Tim Penny at the full House Agriculture Committee mark-up. The reform bill already passed by the subcommittee requires the Appropriations Committee to fund a portion of the program proposed in the reform bill. The Penny amendment would eliminate this requirement by imposing substantial reductions in incentives to farmers and in expense reimbursements to insurance agents. The Department is working with all parties to resolve this emerging problem.

Department of State

- **Congressional Consultations:** Secretary Christopher, accompanied by Secretary Perry, NSC Advisor Lake, Ambassador Albright, and JCS Chairman Shalikashvili met July 13 with key Senators and House Members to consult on Haiti, North Korea and Bosnia. In the House, Members urged extreme caution regarding Haiti. Members saw North Korea as the most serious of the current situations. The Members believe we will face a major battle for approval of peacekeepers in Bosnia. In the Senate, Members drew connections between Haiti, Bosnia and North Korea by raising questions of cost, troop availability, and military capacity.

- **Bosnia:** Tuesday, July 19 is the deadline for formal response to the Contact Group's proposal. Although they are far from an accord, there are a number of indications that we must give some thought to U.S. involvement in implementation of an agreement. The State Department is undertaking a review to ensure that we will be ready to respond quickly if a settlement is reached.

Department of Defense

- **Helicopter Shootdown Release:** Wednesday's news conference with Secretary Perry and General Shalikashvili was preceded by detailed briefings to the families, key Congressional leaders and representatives of the foreign governments, as well as personal phone calls to the MOD's and Chiefs of Defense. It is still early to fully evaluate the reaction, but there has been a general expression of appreciation regarding the openness of the report and the way we proceeded with the investigation.

- **Korea:** DoD has received support from Senator McCain for DoD deployment of radar equipment to the ROK. The Senator is also urging the shipment of additional MLRS Units. DoD is in agreement that deployment may be necessary if tensions escalate, but we must move carefully in view of ROK sensitivities.

- **Floods & Fires:** There are 3,096 Army National Guard soldiers currently serving on state active duty supporting the flood operation. Also, Eight C-130's and 125 personnel from the Air Force Reserve and Air National Guard have been providing fire fighting support in California and Arizona.

United Nations

- **Iraq Sanctions Rollover:** Barring a major concession by Iraq before the July 18 sanctions review, we expect a smooth rollover of sanctions. The French and Russians may again express interest in recognizing Iraqi "progress" in a Council Presidential statement, but we foresee no difficulty in blocking such an attempt.

United States Trade Representative

- **Uruguay Round Implementation:** Ambassador Kantor met with Congressional leadership on Uruguay Round funding and with Senate Finance and House Ways and Means in walk-throughs and executive session. Ambassador Kantor also held a conference call with CEOs and met with AFL-CIO Sec-Treasurer Donahue on UR implementation.

HAITI

Radio democracy will begin broadcasts to Haiti from U.S. military planes July 15. Air France has announced plans to terminate passenger service to Port-au-Prince on August 1. In preparation for the cut-off, we are looking at other means of supporting Embassy operations, refugee departures and delivery or urgent humanitarian supplies. Congressman Richardson is proceeding with plans to travel to Haiti and will meet with General Cedras this weekend. Bill Gray expects the Congressman to support our policy in his talk with Cedras. DoD has approximately 15 countries ready to contribute forces to the UN force, but they will provide only several thousand military personnel and police. The U.S. will comprise the majority of the force, which may complicate passage of a Security Council mandate.

RWANDA

The Rwandan Patriotic Front (RPF) is closing in on Gisenyi, headquarters of the interim Government forces. Their advance is producing a massive new wave of refugees. Over 100,000 Rwandans crossed into Zaire during the night of July 13-14; there are fears the numbers could reach two million. We are engaged in emergency meetings with humanitarian relief organizations and are urging the RPF to work out a cease-fire.

cc: Vice President Gore
Leon Panetta
Mack McLarty

THE PRESIDENT HAS SEEN
7/26

THE WHITE HOUSE

WASHINGTON

94 JUL 25 A10 : 29

MEMORANDUM FOR THE PRESIDENT

I would
[illegible] again - [illegible]
[illegible] of the Calif waiver

FROM: Carol H. Rasco

SUBJ: Waivers

DATE: July 24, 1994

FLORIDA: Following my last message to you about the impending call Attorney General Reno would make to Governor Chiles, I had a call late Friday evening from Governor Chiles' DC staff member who said they are all VERY appreciative of the work of the White House. AG Reno called the Governor's office and not only told them she felt the matter could be closed by having a flat commission for the insurance agents, but that she would like to have Justice Dept. officials sit down with Florida's legal advisors to discuss the matter fully for one last time. Jay Peterson who serves as Chiles' legal counsel is to meet by midweek this coming week with John Hogan of Justice who is also formerly from Florida. The parties know each other, trust each other and fully recognize they are looking at legal issues, not policy issues. I have asked Bruce Lindsey to call Buddy McKay as a follow up to his discussions with Buddy last week to make certain Buddy is aware of these latest developments.

Good

NINTH CIRCUIT: HHS has advised Justice they do not feel there is a need for an appeal. I have attached the HHS memo outlining the rationale. In the meantime, HHS is confident they have in this administration created the necessary record in granting waivers and on the broader issue of public notice in rule making/waiver granting, HHS has been working on that issue with NGA/others anyway. We will continue to monitor this situation to make certain it does not become a false impediment to timely issuance of waivers.

I will be giving you per your request a regular update on the waivers described on the "pending" chart in your briefing materials for the NGA meeting.

cc: Leon Panetta
Lloyd Cutler
Phil Lader
Harold Ickes
Bruce Lindsey
Marcia Hale
Joel Klein

What about the
Calif waiver? Is it
moving? Should we
review?

WITHDRAWAL SHEET
Clinton Library

Collection: **Domestic Policy Council**, Carol Rasco **Archivist: rfw**
OA/Box: OA 7680
File Folder: **Arkansas Abortion 1993** **Date:** 3/25/04

DOCUMENT NO. & TYPE	SUBJECT/TITLE	DATE	RESTRICTION
1. Memo	To Susan Brophy, et al, re: draft for POTUS, 2p	4/10/93	P5 4010

RESTRICTIONS

P1 National security classified information [(a)(1) of the PRA].
P2 Relating to 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].

PRM Personal records misfile defined in accordance with 44 USC 2201 (3).

B1 National security classified information [(b) (1) of the FOIA].
B2 Release could disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA].
B3 Release would violate a Federal statute [(b)(3) of the FOIA].
B4 Release would disclose trade secrets or confidential commercial financial information [(b)(4) of the FOIA].
B6 Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA].
B7 Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA].
B8 Release would disclose information concerning the regulation of financial institutions [(b)(9) of the FOIA].
B9 Release would disclose geological or geophysical information

D R A F T

INFORMATION

MEMORANDUM FOR THE PRESIDENT

FROM: HOWARD PASTER

SUBJECT: FREEDOM OF CHOICE LOBBY AND THE LEGISLATIVE CALENDAR

We are coming under increased pressure from the Freedom of Choice lobby to press Speaker Foley and Majority Leaders Gephardt and Mitchell to take up the Freedom of Choice Act as early as next month. In deciding how to respond to that request, it is necessary to take a look at how the broader issues of abortion and choice will play out during the balance of the year.

It is likely that abortion-related debates and votes will develop in the House and/or the Senate on four separate appropriations bills:

- The Labor-HHS appropriations from which you have deleted the Hyde amendment and where there will certainly be a battle about the appropriate use of federal funds to finance abortions;

- The Treasury, Post Office, General Government appropriations from which you have deleted a provision that precluded health plans for federal employees from including abortion as an available benefit in such plans;

- The Defense appropriations where there is often a debate on the terms and conditions under which abortions may be performed in military hospitals; and

- The District of Columbia appropriations which President Bush vetoed because it did not limit abortion rights in the District despite the federal payment to the District.

In addition, the foreign aid bill may engender additional debate because of policy changes you have made in this area.

Also, however abortion rights are dealt with in the health care reform initiative, we know in advance there will be an intense debate on this question. Already we have health care reform allies weighing in passionately on both sides of the issue. This debate will take place in several committees throughout the hearing and mark-up process and on the floor for the balance of 1993.

In the face of all of this we are confronted with intense and growing pressure from Clinton supporters who maintain the Freedom of Choice Act (FOCA) was not taken up last year as a courtesy to the Clinton campaign. The argument being made is quite simple: you told us last fall it was a bad time to have FOCA debated in the House and Senate and we accepted your recommendation in order to help elect a pro-choice ticket. Now you owe it to us to encourage the Hill leadership to move the bill quickly. If you do not help us press for quick action on this most fundamental measure, we will then wonder what is the value of having helped to elect a pro-choice ticket.

The counter argument, made by some, is that it is not in the interests of the Administration to have a substantial national debate on abortion at a time when we want to refocus attention on the economy and health care reform. Those who hold this point of view argue that we will have a good many abortion debates and votes in the months ahead; it does not make sense for us to unnecessarily bring attention to this issue. In the words of one Member of Congress with whom I spoke, "This, along with gays in the military, will worsen your cultural disconnection with urban, ethnic, and other swing voters."

While not directly related, there is nonetheless a connection between this issue and your selection of a nominee for the Supreme Court. If you do not nominate a woman it will probably further complicate the gender politics raised by the choice advocates. There will likely be even more agitation if you nominate a man whose choice position is not clear.

While this memo -- which I showed in draft form to a number of senior staff -- is not designed to elicit a decision, I hope this background will help should you be confronted with a question on this issue before a firm policy is determined. Also, I will seek to have this memo serve as the catalyst for a staff process that will bring a more carefully delineated set of options to you.

WITHDRAWAL SHEET
Clinton Library

Collection: **Domestic Policy Council** - Rasco, Carol

Archivist: rfw

OA/Box: OA 7453

File Folder: **Chinese Immigrant Smuggling**

Date: 3/27/04

DOCUMENT NO. & TYPE	SUBJECT/TITLE	DATE	RESTRICTION
1. Memo	For V.P, Chief of Staff, et al., from Abner Mikva Re: Chinese Immigration Litigation, 1p	12/7/94	P5
2. Memo	For V.P., DPC, NSC, Office of Comm. From Bernard Nussbaum, Clifford Sloan, Marvin Krislov re: Chinese Immigration Legislation, 4p	12/20/93	P5
3. Memo	For POTUS from V.P. re: Chinese Smuggling, 3p	nd	P5 4014
4.Memo	For Carol Rasco from Donsia Strong re: Chinese Migrant Smuggling, 3p	5/17/93	P5

RESTRICTIONS

P1 National security classified information [(a)(1) of the PRA].
P2 Relating to 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.

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B7 Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA].
B8 Release would disclose information concerning the regulation of financial institutions [(b)(9) of the FOIA].
B9 Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA].

MEMORANDUM FOR THE PRESIDENT

FROM: THE VICE PRESIDENT

SUBJECT: Chinese Alien Smuggling

You asked me to look into the immigration issue while you were gone, and I will have a report for you shortly on where we stand. However, we have an immediate problem on Chinese alien smuggling.

There are three ships of uncertain registry off Baja California on the Mexican Pacific coast. These vessels have 650 Chinese aboard, all intending to come to the U.S., apparently under the auspices of criminally organized alien smugglers. The Coast Guard -- which has heightened surveillance since your policy directive on alien smuggling -- is on scene, on board the vessels, and in control. There had been a hurricane threat; it appears now to have dissipated.

These migrants have been at sea for over six weeks in intolerable conditions, and we need to decide quickly what to do. A forceful response is necessary for deterrent value with the smugglers. The issue is also in the press and we expect public pressures to keep the migrants out but also pressures to treat them humanely. Because the issue of funding is central to any decision and because there is interagency disagreement on the money, Carol Rasco asked me to chair an interagency meeting to sort through the issues and provide you with a proposal reflecting senior level views.

All agreed that we want to avoid allowing these aliens to enter the U.S. It would cost $3.4 million to detain them while processing for exclusion, and use of personnel and detention space as well as the cost of deportation would be considerable. Two alternatives were considered: landing the migrants in Mexico and repatriating them from there by plane or meeting at sea with a US Navy amphibious ship which would repatriate the migrants.

All preferred that we approach Mexico, with refugee processing by UNHCR and repatriation by plane of those not qualifying as refugees. This will require discussions about who pays. In a June incident in the Mexican city of Calexico involving Chinese migrants, we agreed to share the costs, but the costs were higher than anticipated and we did not have additional funds for reimbursement of Mexico. Thus Mexico paid twice as much as we did. State believes that we will have to promise to pay the full cost of the aircraft for this incident ($1-1.5 million) and make some restitution for the last time (up to $400,000) in order to gain Mexican agreement. All agreed that this was necessary because we will certainly need to work with Mexico again on alien smuggling and a solid base for cooperation will be essential in the months ahead.

All agreed further that in approaching the Mexicans, we would also want to ensure that security would be adequate, given that half the detainees escaped before repatriation in the Calexico incident. We will also ask that the Mexicans seize the smuggling ships and that they apprehend and jail the crews or extradite them to the U.S. to send a strong signal to the smugglers.

There was disagreement on whether we should offer a U.S. military aircraft or hire a civilian charter. Defense felt there was no security requirement for military air, that the mission was law enforcement, and that military air ferrying smuggled aliens back to China would send an inappropriate signal. Justice believed that military aircraft would send a signal of U.S. determination on this issue and that there might be an air security problem with non-military craft. State noted that there were no aircraft security problems previously, but pointed out that chartering civilian aircraft might be difficult to effect quickly.

On funding, every agency agreed that someone else should pay. Justice argued that its Immigration Emergency Fund (which has never been used in twelve years) requires you to declare an emergency (you would indeed have to make such a determination) and that this incident did not meet that test. In addition, states like Florida, Texas, and California have complained that they have not been able to access the fund for what they would argue were more serious problems -- Haitian HIV-positive entrants and immigrant Salvadorans, Guatemalans and Cubans. Direct congressional appeals have been made recently on this issue, and it is possible that use of this fund for repatriation of Chinese and not for compensating states will anger members whose support we need on important legislative issues such as the reconciliation conference.

Finally, Justice also argued that there is no legal authority to use the Immigration Emergency Fund to pay restitution for the earlier Calexio incident.

State argued that its refugee and economic assistance was already programmed, that this was a law enforcement mission which should be paid for as such, and that State had paid for similar actions the last three times out of scarce funds designated for humanitarian assistance to places like Bosnia, and should not have to pay again. Defense argued that if military air was used it would have to be paid for out of operations and maintenance funds cutting further into operational readiness.

RECOMMENDATION

I believe we have the right general approach with the Mexican option so long as we are prepared to pay for the air transport this time and make some settlement for last time. I lean toward the civilian air charter rather than military air which seems inappropriate if we can avoid it.

On funding, I have three recommendations. First, we ask State to pay for whatever is necessary to resolve disagreement over the Calexico payments ($400,000); they can choose the particular account from which to draw the money. Second, we ask Justice to pay for the air transport and any other costs of this incident ($1.5 million) from the Emergency Fund. Third, because this will not be the last of these incidents, we make an additional $4.5 million available from the Emergency Fund for future alien smuggling contingencies. To deal with state concerns, we should also ask Justice to recommend some disbursement ($10-15 million) to those with immigration problems, e.g., California, Florida, and Texas (under the law, the disbursement to states would not require that you declare an emergency). That will leave $9-14 million left in the Fund. Then we should ask legislators from those states which received funds to sponsor legislation to replenish the fund in FY 94 so that we and they can deal with future contingencies. (We would then have to offset the replenishment with cuts elsewhere in the budget.)

If you agree on the funding, we will undertake the necessary paperwork and approach the Mexicans. On the worst case assumption that the Mexicans balk, I would recommend the military amphibious craft option, with support from Coast Guard.

Concurrences by: Anthony Lake, Carol Rasco, Leon Panetta

WITHDRAWAL SHEET
Clinton Library

Collection: **Domestic Policy Council** - Rasco, Carol

Archivist: rfw

OA/Box: OA 7453
File Folder: **Department of Energy**

Date: 4/2/04

DOCUMENT NO. & TYPE	SUBJECT/TITLE	DATE	RESTRICTION
1. Memo	From Gauldin to POTUS re: nuclear safety, 1p (partial)	4/4/93	P5 b(6) 4015
2. Memo	To the Secretary [DOE] from Dan Reicher, Peter Brush re: nuclear safety, 2p	4/30/93	P5

RESTRICTIONS

P1 National security classified information [(a)(1) of the PRA].
P2 Relating to 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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MEMO

May 4, 1993

TO: President BC
THROUGH: Rasco
FROM: Gauldin Gauldin

RE: Nuclear safety

This is in response to your questions about the Washington Post article on nuclear safety faxed to me yesterday.

[redacted] (b)(6)

Of 57 unsafe incidents cited in the report, all but 13 had been corrected to the satisfaction of Blush's office before the report was written. The remainder are in the process of being corrected.

As soon as she took office, Secretary O'Leary determined that the Department's safety policies and procedures were inadequate. Responsibility for various areas of safety (nuclear safety, worker safety, chemical and fire hazards, etc.) were split up between four departments that did not coordinate with each other. About 20 people were killed in the Department of Energy under Secretary Watkins and many more were seriously injured, a situation that Secretary O'Leary found unacceptable.

O'Leary has restructured the Department, combining all safety functions into one office that reports directly to her. She has directed that office to develop a comprehensive ("cross-cutting") safety policy that focuses on correcting unsafe situation rather than just counting them.

Tomorrow, May 5, Secretary O'Leary will announce a major department-wide safety initiative. Attached is a draft copy of the initiative.

WITHDRAWAL SHEET
Clinton Library

Collection: **Domestic Policy Council** - Rasco, Carol

Archivist: **rfw**

OA/Box: OA 5859

File Folder: **Immigration Info '92/'93 [1]**

Date: 4/2/04

DOCUMENT NO. & TYPE	SUBJECT/TITLE	DATE	RESTRICTION
1. Memo	From V.P. to POTUS re: Gov. Wilson's immigration proposals, 3p	8/11/93	P5 4016

RESTRICTIONS

P1 National security classified information [(a)(1) of the PRA].
P2 Relating to appointment to Federal office [(a)(2) of the PRA].
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B9 Release would disclose geological or geophysical information

August 11, 1993

MEMORANDUM FOR THE PRESIDENT

FROM: THE VICE PRESIDENT

SUBJECT: GOVERNOR WILSON'S IMMIGRATION PROPOSALS

You asked me to comment on the major immigration proposals being urged by Pete Wilson, Governor of California. In short, we should reject his recommendation to fight illegal immigration by denying citizenship to children born in the United States. Certain aspects of his proposal regarding benefits and identification cards, however, may warrant review by the inter-agency working group on immigration.

I. Denying Citizenship to Children Born in the United States

Governor Wilson contends that automatic citizenship encourages illegal immigrants to have children in this country and recommends that the Constitution be amended so as to allow us to deny citizenship to children (of illegal immigrants) who are born in the United States. (As you know, the fourteenth amendment provides: "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and the State wherein they reside.")

We must reject this idea. First, the United States has never carved out an exception to the citizenship clause of the fourteenth amendment for children of foreign nationals -- even if the parents are in the United States illegally. Second, limiting birthright citizenship because of lineage and ancestry would link us to the days before the passage of the fourteenth amendment, when this country was bound to the Dred Scott decision (the case in which the Supreme Court held that African-Americans were not "citizens" under the Constitution). Third, Governor Wilson's proposal punishes children who have done nothing to violate the laws of the United States. And finally, no evidence exists that such an amendment would actually reduce the number of children born in this country to illegal immigrant parents.

II. Denying Education and Social Services to Illegal Immigrants

Governor Wilson believes that we will reduce illegal migration if we deny illegal immigrants the right to education and other social services. This proposal is also generally unacceptable.

While there are no federal statutes that require states to provide illegal immigrants with an education, in 1982, the Supreme Court held, in Plyler v. Doe, that the equal protection clause prohibits a state from withholding education to children who are not "legally admitted" to the state. To effectuate Governor Wilson's proposal would therefore require the Supreme Court to reverse itself. In addition, to deny education to children of illegal immigrants would guarantee their membership in a permanent underclass in this country.

Illegal immigrants are also currently eligible for certain federal benefits under the Stafford Disaster Relief Act, the Medicaid laws, and a Department of Justice directive regarding public housing. The Stafford Disaster Relief Act allows an illegal immigrant to receive the following assistance during or because of a Presidential declared disaster: (1) temporary housing assistance; (2) individual family grants of up to $11,000; and (3) unemployment assistance for up to 26 weeks. (The Act explicitly prohibits discrimination based upon national origin.) No sound reason exists to tamper with this legislation, which provides assistance to individuals struck by disaster.

In addition, the 1986 Omnibus Budget Reconciliation Act amendments to the Medicaid statute make federal financial participation available for states where illegal immigrants are treated for an "emergency medical condition." The level of assistance mandated by this statute is minimal, but this aid is quite important. Without such assistance, illegal immigrants may be unable to receive treatment for serious medical problems. The Administration may nonetheless want to consider examining current practices and program guidelines so to discourage illegal immigrants from using these emergency funds for general medical assistance. I will ask the inter-agency working group to consider this issue. (The Welfare Reform Group may have already begun to consider this issue.)

Finally, in 1989, the Department of Justice found that no HUD regulation existed so as to bar illegal immigrants from public housing. (In 1988, HUD proposed a regulation restricting illegal immigrants' access to public housing; however, this regulation was never finalized because then-Secretary Kemp believed that such a regulation would add to the homeless population.) This Administration has proposed a final rule similar to HUD's 1988 proposed regulation -- i.e., the proposed regulation would prohibit illegal immigrants from renting public housing. This proposed regulation is currently under review at HUD and may be forwarded to OMB as early as September 1993.

In sum, while some evidence exists to support Governor Wilson's claim that federal benefits create an incentive for illegal migration, I believe that the Administration should focus on reviewing and enforcing employer sanctions and labor laws to deter illegal immigration. This will allow us to affect what we know to be a major incentive for illegal migration (work) without resorting to the more difficult and dangerous response of revoking federal benefits. Staff on the inter-agency working group will be working with immigrant rights groups in fashioning changes to employer sanctions and labor laws that are both acceptable and successful.

III. <u>Identification Cards</u>

Governor Wilson recommends that the federal government issue a national identification card to citizens and legal residents to enable the government, employers, and social service organizations to identify these individuals and to deny benefits to those without such a card -- illegal immigrants.

During the inter-agency review process on asylum reform, we discussed the concept of creating an identification card for employment. It was abandoned at that juncture for two reasons. First, the health care task force is contemplating using an identification card for health care, which may be appropriate for use in seeking employment. Second, during the 1986 and 1990 immigration reform process, the Hispanic Caucus actively fought the implementation of national identification cards. (Hispanic rights groups have assailed Governor Wilson's identification card proposal, recounting stories about Hispanic Americans who were forced to carry such cards in the 1950s and 1960s and the discrimination and police harassment that resulted.) Because this idea may have some merit in the employment context (it has been proposed, tentatively, by the Reinventing Government immigration team), I will ask the inter-agency working group to resume its review of this issue.

* * *

In sum, Governor Wilson's recommendations have nativist and xenophobic overtones and, thus, should not be endorsed. The inter-agency working group (along with other appropriate staff members) should, however, review the Medicaid provisions and the appropriateness of instituting a national identification card system.

I look forward to discussing these issues further with you.

Withdrawal/Redaction Sheet
Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. memo	To Bernard Nussbaum, Carol Rasco, et. al. from Cheryl Mills and Marvin Krislov re: Civil Rights Act of 1991 Provisions (4 pages)	09/17/93	P5 8021

COLLECTION:

Clinton Presidential Records
Domestic Policy Council
Carol Rasco (Meetings, Trips, Events)
OA/Box Number: 4592

FOLDER TITLE:

Equal Opportunity Policy 9-20-93 3:00-4:00

Rhonda Wilson

rw158

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]
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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(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

DETERMINED TO BE AN
ADMINISTRATIVE MARKING
INITIALS: NW DATE: 9/20/05

September 17, 1993

ATTORNEY WORK PRODUCT--PRIVILEGED AND ~~CONFIDENTIAL~~

8021

MEMORANDUM FOR BERNARD W. NUSSBAUM
COUNSEL TO THE PRESIDENT

CAROL RASCO
ASSISTANT TO THE PRESIDENT FOR DOMESTIC POLICY

BRUCE LINDSEY
ASSISTANT TO THE PRESIDENT AND
DIRECTOR OF PRESIDENTIAL PERSONNEL

WILLIAM KENNEDY
ASSOCIATE COUNSEL TO THE PRESIDENT

FROM: CHERYL MILLS CM
ASSOCIATE COUNSEL TO THE PRESIDENT

MARVIN KRISLOV MK/cdm
SPECIAL COUNSEL TO THE PRESIDENT

SUBJECT: Civil Rights Act of 1991 Provisions Addressing Presidential Appointees

In the Civil Rights Act of 1991 ("the Act"), Congress extended provisions barring employment discrimination based on race, color, religion, sex, national origin, age, and disability to previously exempted Presidential appointees. The 1991 law covers "any officer or employee, or an applicant seeking to become an officer or employee, in any unit of the Executive Branch, whether appointed by the President or by any other appointing authority in the Executive Branch." The law exempts appointees confirmed by the Senate, those named to an advisory committee, and those who are in the uniformed services.

This spring, the Equal Employment Opportunity Commission ("EEOC" or "the Commission") drafted proposed regulations that would designate that agency to address complaints brought by Presidential appointees. Their proposed regulations, which have not been published in the Federal Register, raise many issues.

The Act provides the President with the opportunity to propose, by Executive Order, his own process to administer discrimination complaints raised by Presidential appointees. Such procedures would substitute for the EEOC's procedures. To date, we have not proposed such an alternative process.

Below is an outline of the most important policy issues that require resolution regarding the administration of discrimination complaints brought by Presidential appointees under the Act.

Also attached are copies of the Act (tabbed) and the draft EEOC regulations.

ISSUES

1. <u>Should we challenge the constitutionality of the Act, or submit to it?</u>

The statute arguably encroaches upon the most sensitive area of Presidential power, appointment authority, most particularly in the area of his personal staff. In a recent district court hearing, Judge Stanley Sporkin questioned the constitutionality of the Act as applied to the President's personal staff.

However, mounting a court challenge would only be politically palatable if we had an Executive Order in place that addressed the same issues. This is particularly true in light of the fact that the Act, in addition to covering Presidential appointees, also covers Senate employees, as well as state and local government employees. We should be mindful, however, that not challenging the Act might waive the argument for future presidents.

2. <u>If we do not challenge the statute, should we allow the EEOC to administer it or should we establish a different process?</u>

The Act allows the President to designate another entity to administer the process, which could be the Equal Opportunity Officer for the Executive Office of the President ("EOP") within the Office of Administration or another agency or office entirely. While the EEOC does have experience in administering such complaints, it does not have a reputation for speedy resolution and relying upon their investigators could raise privacy and privilege concerns.

3. <u>Should we include sexual orientation as a protected class in the White House Equal Opportunity Policy?</u>

None of the relevant anti-discrimination laws include sexual orientation as a protected class; nevertheless, including it in an Executive Order would emphasize this Administration's commitment to equal opportunity for homosexuals. We should point out that the Department of Agriculture's new Equal Opportunity Employment Policy, <u>see</u> attached, prohibits discrimination on the basis of sexual orientation.

The EEOC presumably could not legally enforce this protection, so we would need to establish two tracks if we included sexual orientation as a protected class and wanted the EEOC to enforce the law. And, even if we set up an internal process, complainants raising discrimination claims on the basis of sexual orientation would be unable to seek the judicial review provided for in the Act.

4. Who is a Presidential appointee under the Act?

The Act defines Presidential appointee broadly, and the legislative history provides little guidance as to whom Congress intended to cover. The statutory language could be read to include any appointee in the EOP and the Executive Branch, which arguably encompasses members of Boards and Commissions, interns, and even some volunteers.

Prior to 1991, Title VII of the Civil Rights Act of 1964 covered employees of federal agencies. It is our understanding from an EEOC staff member that the Commission assumed that the Act covered Schedule C political appointees at each agency although no such complaints apparently reached the EEOC. The EEOC assumes that the 1991 Act does not change that situation, although their counsel admitted that their draft EEOC regulations do not clarify the scope of "Presidential appointee," but rather merely track the Act's language.

5. Who is an applicant for a Presidential appointment?

Under the Act, applicants for presidentially appointed positions also enjoy coverage. The Act provides no guidance as to the scope of this class of individuals. However, EEOC practice and case law tend to construe this term broadly. Thus, the EEOC told us that someone who sent in a resume for an unadvertised position in the EOP would be considered an applicant under their draft regulations and under analogous regulations for civil service and private sector jobs.

There does not appear to be any principled line that can be drawn that would limit the definition of applicant and remain consistent with the statute and precedent.

6. Assuming that we choose to design an internal process, who should be responsible for administering complaints?

The Senate procedures, which are outlined in the Act, specify that the Senate Office for Fair Employment Practices counsels employees, with any formal complaints heard by three independent hearing board officers.

We could rely on the Equal Employment Officer for the EOP (a civil servant) for counseling and mediation of White House complaints, and then use an administrative law judge for hearings and/or an independent board for appeals (possible sources for such board members include the EEOC, the Merit Systems Protection Board, and the Office of Personnel Management). Another possibility would be to designate a Presidential appointee (e.g., Chief of Staff) and/or a board within the EOP to hear these complaints.

7. <u>How should the scope of discovery be limited to protect executive privilege and privacy concerns?</u>

The EEOC draft regulations allow their investigators to subpoena witnesses and documents before any formal hearing. These draft regulations also give both parties to a complaint subpoena power (discovery). Disputes between the parties are handled by an Administrative Law Judge ("ALJ") and the Commission. Thus, the draft regulations raise executive privilege issues. The Senate procedures allow subpoenas by the hearing board; objections on the grounds of privilege go to the hearing board and then, on appeal, to the Senate Committee on Ethics.

In addition to privilege issues, existing EEOC practice is to turn over the entire file of a complaint to both parties, exposing the documents to Freedom of Information Act ("FOIA") requests. Also, the EEOC is subject to FOIA. Moreover, such requests arguably implicate privacy concerns on behalf of both parties.

For any internal procedure, we would want to recognize executive privilege and privacy concerns. However, even if our internal procedure was more restrictive in discovery, there would still be concerns over privacy, since any outside ALJ or hearing board officers would have access to the documents and testimony. And, even if we were to keep the process entirely within the EOP, all privacy and FOIA concerns still would not be eliminated.

8. <u>If administered within the EOP, where would the funds come from to pay for these procedures? Whether administered internally or by the EEOC, where would the funds come from to pay any relief ordered and attorneys' fees?</u>

It appears that the costs of administering an internal complaint process would be born by the White House. However, it is unclear what funds properly are available to cover such costs.

Additionally, EEOC procedures currently allow remedies in the form of both back pay awards as well as specific performance, <u>i.e.</u>, hiring, elevating or restoring an injured complainant to his or her job. The Act allows a prevailing complainant to recover attorneys' fees, and provides that the President must reimburse the appropriate federal account for any payment made to compensate for a violation. The provision governing Presidential reimbursement clearly raises constitutional concerns.

Withdrawal/Redaction Sheet
Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. memo	To Anthony Lake, et. al. from Carol Rasco re: DOJ Asylum Reform Briefing (15 pages)	10/04/93	P5

8022

COLLECTION:

Clinton Presidential Records
Domestic Policy Council
Carol Rasco (Meetings, Trips, Events)
OA/Box Number: 4593

FOLDER TITLE:

DOJ Asylum Reform Briefing 10-05-93 9:00

Rhonda Wilson

rw170

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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8022

THE WHITE HOUSE

WASHINGTON

October 4, 1993

MEMORANDUM FOR DISTRIBUTION

ANTHONY LAKE
BERNARD NUSSBAUM
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FROM CAROL H. RASCO

SUBJECT DOJ Asylum Reform Briefing

On July 27, the President directed the Attorney General to review the administrative asylum process, which is the subject of continuing abuse. DOJ was to present its plan for streamlining and reforming the asylum process within 60 days. Attached is DOJ's draft of the proposed plan for reforming the asylum process.

BACKGROUND

Currently, the asylum process is being abused by aliens who claim asylum with no likelihood of succeeding on the merits. However, the lengthy process and procedures, lack of detention and work authorization while the case is adjudicated often acts as a magnet for newcomers. More than 140,000 claims for asylum were filed with INS in FY '93.

There are two separate and distinct asylum processes. The two processes are the INS "affirmative" process, and the EOIR "defensive" process. Defensive applicants use asylum as a defense against deportation or exclusion from the country. Affirmative applicants apply of their volition, before any adverse immigration action is taken against them.

Each process has a backlog. Defensive: 125,000 cases -- Affirmative: 275,000 cases.

There are 150 asylum corp officers that adjudicate the affirmative asylum cases.

There are 86 EOIR immigration judges that handle defensive cases.

The expedited exclusion legislation developed by the Administration deals <u>solely</u> with asylum claims made at ports of entry. There are about 10,000-15,000 of these claims presented every year.

CURRENT AFFIRMATIVE ASYLUM ADJUDICATORY PROCESS

Under the current system, individuals who have entered the country without INS inspection but were not apprehended, or entered the country legally and remain in status or whose status has lapsed, come forward and file a claim for asylum with INS. The claim is adjudicated by the INS Asylum Corp.

Asylum claims denied by the Asylum Corp. can be appealed to an Immigration Judge who will hear the claim de novo or anew. These hearings are adversarial and involve INS counsel and defense attorneys.

Further review is available to those denied asylum by an Immigration Judge before the Board of Immigration Appeals. BIA decisions are administratively final, however, an individual may appeal to the Federal courts in certain instances.

A judicial appeal automatically stays the execution of a deportation or exclusion order. If an alien is successful she may be allowed to become a permanent resident after the statutory time period.

***

Many in Congress would prefer to dispense with the current combination statutory/regulatory asylum scheme. Several bills have been introduced to reform and revise asylum completely; remove layers review or appellate relief; change the standard of review for asylum claims; or consolidate most aspects of the process into one. If the Administration proposal is not credible as genuine reform, the Administration's expedited exclusion legislation will probably be amended to reflect the changes sought. The Administration's legislation has been introduced by Senator Kennedy and Representative Brooks. So far the strategy has been to refrain from marking-up any legislation until DOJ presented its plan for asylum reform in order to present the Administration's legislation and regulatory changes as a reform package.

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COMPREHENSIVE ASYLUM REFORM

I. POLITICAL ASYLUM - ADDRESSING OUR ENFORCEMENT VULNERABILITY

- Our country's historic tradition and adherence to international treaties establishes the United States' commitment to adjudicating claims of political asylum and protecting those who are determined to have a "well-founded fear of persecution."

- Although asylum adjudication has been the topic of heated debate and reform efforts as recently as 1990, asylum has not been given priority in the context of overall immigration policy and enforcement.

- As confirmed by recent studies, grossly insufficient resources -- personnel, technological and administrative support -- have been devoted to this difficult and delicate task.

  o Hiring ceilings for the Asylum Corps in 1990 were sufficient to meet only 1/3 of workload assumptions. Increases to the Corps in 1991 still did not match caseload demands. Emergencies such as Haitian refugee processing at Guantanamo diverted scarce resources, and class action settlements requiring second adjudications added cases to the backlog of 100,000 the Asylum Corps initially inherited.

- More than 140,000 political asylum claims were filed with INS in FY '93, two and a half times as many as were received in FY '91 (56,000). The Asylum Corps had the capacity to adjudicate or otherwise administratively close only 36,000. The remainder were added to the backlog which now totals over 300,000 cases. These backlogged applicants currently have no meaningful prospect for receiving an interview, much less having their claims adjudicated.

- Compounding the present system's inability to keep current with receipts is the fact that pursuant to regulations interim work authorization must be issued to non-frivolous asylum claimants whose claims are not heard within 90 days. (8 CFR 208.7)

- As a consequence, virtually anyone who applies for asylum, whether or not they have a legitimate application, receives this valuable benefit. Increasingly, boilerplate applications are being filed. Work authorization has become a magnet for applications, and no real disincentives for filing exist.

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- The result is that the system intended to give protection to bona fide refugees has presented a rich opportunity for abuse to those who wish to come to and remain in our country illegally.

II. THE PRESIDENT'S INITIATIVE AND CALL FOR REFORM

- Proposed expedited exclusion legislation announced in the President's July 27th anti-smuggling initiative addresses one aspect of the asylum adjudication problem: the highly visible problem of individuals arriving at our airports or by vessel with fraudulent or no documentation.

- The President's initiative also tasked the Department of Justice (DOJ) to study and propose reform for the much larger component for the asylum problem, "affirmative asylum." The affirmative asylum system allows individuals 1) who have entered the country without inspection but were not apprehended, or 2) entered the country legally and remain in legal status or whose status has lapsed, to come forward and file a claim for political asylum.

- The Department of Justice studied 1) the regulatory and statutory framework for asylum adjudications; 2) the productivity of the DOJ components charged with this duty; and 3) the applicant profile. The Department also pursued an expansive consultation process, receiving input form the Hill, federal agencies and non-governmental organizations involved in asylum issues.

- A set of principles was developed to guide the reform process:

  - Asylum adjudications must be fair and timely.

  - A good asylum system must quickly identify bona-fide refugees.

  - To deter abuse and to preserve the integrity of the process, an asylum system must have the capacity to remain current with receipts.

  - In the context of ever-increasing migration of people with mixed and often complex reasons for departure, asylum adjudications require adjudicators with specialized training and access to up-to-date country of origin information.

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o A fully efficient asylum system must have a credible deportation capacity at the end of the process.

o Asylum cannot be treated in a vacuum but must be seen as part of a larger immigration policy agenda.

III. THE CURRENT ASYLUM ADJUDICATORY PROCESS

- The current statutory framework gives the Attorney General broad authority to establish asylum adjudication procedures. These procedures are contained in regulations at 8 CFR Part 208.

- Pursuant to those regulations, asylum adjudications are initially adjudicated by two Department of Justice entities: 1) the INS Asylum Corps, and 2) Immigration Judges, part of the Executive Office for Immigration Review (EOIR).

1) INS Asylum Corps

Created in 1990, the Corps now has 150 specially trained officers. They have primary jurisdiction over approximately 90% of the total political asylum claims filed annually. Applying non-adversarial interviewing techniques and utilizing country condition information made available through the INS Asylum Resource Information Center, their task is to render an asylum decision free of foreign policy or immigration bias. Despite its resource constraints, the Corps has successfully established its credibility for fair adjudications.

2) Immigration Judges

A claim denied by the Asylum Corps Officer may be heard de novo by Immigration Judges in the context of deportation or exclusion hearings. These proceedings are adversarial in nature and generally involve the participation of INS counsel and defense attorneys.

Immigration judges also have primary jurisdiction over claims filed by individuals after deportation or exclusion proceedings begin (approximately 10% of the total combined asylum caseload). Average processing time from receipt to final decision for non-detained cases is one year.

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3) Board of Immigration Appeals (BIA)

Administrative appellate review of Immigration Judge decisions is available before the Board of Immigration Appeals. The BIA receives approximately 13,000 cases annually, and 30% of the caseload is made up of asylum claims. Average processing time from receipt to final decision for non-detained cases is two years. (Detained cases make up 15% of caseload and are completed in 4 months.)

4) Judicial Review

Judicial Review of BIA decisions in deportation proceedings is available in the Courts of Appeals. For exclusion cases review is available in the District Courts on habeas corpus.

IV. IDENTIFYING THE PROBLEMS IN THE SYSTEM AND CAUSES FOR DELAY

In addition to the central problem of insufficient resources, the following major stumbling blocks to expedient adjudications were identified:

The Snowball Effect of "Work Authorization" and Backlog

- Boilerplate applications clog the system

  - Applications are filed by mail at 4 INS Regional Service Centers. Numerous claims, valid on their face but lacking factual foundation, have routinely been accepted.

- Availability of Work Authorization Serves as a Magnet

  - Because work authorization is granted within 90 days of filing and the growing asylum caseload precludes all but 30% of claimants from even getting an interview, anyone can file an asylum claim and have an excellent chance of gaining the right to live and work in the United States for extended periods. This loop-hole in the system has become well known and has been exploited by smugglers and other organizers.

- No Disincentives Exist for Filing Spurious Claims

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o Sanctions for filing claims fraudulently have not been effectively instituted or enforced. Nor are there other negative consequences for abusing the system.

Delays in Asylum Processing

- The Asylum Officer Corps process gets bogged down by:

  o The regulatory requirement of a detailed written denial by an Asylum Officer, which serves little concrete purpose in light of the availability of a de-novo review by an immigration judge before an order of deportation can be issued.

  o The 60 day period allowed for the State Department to provide a letter commenting on each individual case; in the great majority of cases these letters contain only generic country-condition information.

  o The lack of automation and clerical support available to support the Asylum Corps and the drain on officer resources caused by the process for issuing employment authorization documents (EADs).

- The Immigration Judge system must deal with procedural complexities and delays:

  o Until recently, automated scheduling was not available. Under current capacity, charging documents issued by the asylum office ordinarily do not contain the date and place of the initial Immigration Judge hearing, and a second mailing from immigration court is necessary to establish a date for the master calendar hearing. Unless a notice containing date and place is effectively served, an in-absentia deportation order cannot issue against those applicants who choose not to appear.

  o Average asylum case completion time averages over one year due to crowded dockets, delays between master calendar and merits hearings due to the irregular availability of pro-bono counsel and interpreters and the necessity to assign priority to detained cases and to deportation hearings held in prisons before release of prisoners who are aliens.

- The Board of Immigration Appeals provides a third opportunity for consideration of the case and attendant delays:

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- Two-thirds of the asylum denials by Immigration Judges are appealed and require a full written decision.

- The average non-detained case decided by the BIA in 1992 had been filed more than two years earlier.

- Judicial review automatically stays deportation of denied applicants during which time work authorization remains valid.

Lack of Coordination and Integration between Adjudications

- Systems for definitively identifying and tracking applicants and claims within the Asylum Corps and between the Asylum Corps and Immigration Judge system do not exist.

- The majority of applicants are free to "drop out of the process" with impunity. There is little or no consequence to filing an asylum claim, having it denied, changing the basis of the claim before the immigration judge, or for failing to "show" at different stages of the proceeding.

V. THE NEED FOR AN INTEGRATED SYSTEM AND SECURING AN ENFORCEABLE RESULT

- Although the multi-tiered adjudication structure is commonly assumed to be the primary cause for prolonged and ineffective asylum adjudications, in fact the major problem is the failure to interview all applicants in a timely manner.

- The failure of the system means that bona fide claims as well as non-meritorious claims are languishing unadjudicated. Deserving individuals are prevented from securing the protection they require and being given the chance to restart their lives and to reunite with their families who may be facing significant dangers.

- In addition, INS and EOIR processes are not linked, and neither has sufficient resources. According to available statistics, in FY '92, only 54% of denials by the Asylum Corps resulted in charging documents filed with EOIR. A 16% no-show rate at Asylum Corps interviews also indicates that claimants "fall-out" rather than exercise their right to pursue their claim further.

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- The most cost-effective and timely way to effect comprehensive asylum reform is a system that interviews all applicants quickly, granting asylum to bona fide refugees and linking failed applicants to deportation or exclusion proceedings if asylum is not granted by the INS Asylum Officer.

VI. WHAT NEEDS TO BE DONE TO MAKE THE SYSTEM WORK

Speed up Deportation Process for Non-meritorious cases through Integration of Adjudications and Streamlining

Modify Function of Asylum Corps - Double Productivity

- The principal function of the asylum officers must be to focus on the speedy grant of asylum to meritorious applicants. This can be done by eliminating the requirement for a detailed written denial if the officer cannot grant the claim. These cases instead will be referred to the Immigration Court according to the following procedures:

  o Upon initial receipt of the application at the Regional Service Center, an order to show cause -- the charging document required for initiation of deportation proceedings -- will be prepared and transferred electronically to the Asylum Corps with the applicant's file.

  o At the time of interview, applicants' definitive identity will be established through fingerprints or hand imaging, eliminating the possibility of multiple applications.

  o After the interview, if unable to grant asylum, the Asylum Officer will serve the charging document upon the applicant either in person or by certified mail within 7 days.

  o By linking asylum offices and immigration courts through automation, each order to show cause will contain a firm hearing date before an Immigration Judge. Failure to appear before the Immigration Judge will result in an order of deportation in absentia.

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- As a result, each affirmative asylum applicant has the opportunity for a full and timely hearing before an Immigration Judge if the Asylum Officer was unable to grant asylum. However, the applicant cannot defeat deportation by simply dropping out, and his application "carries consequences."

- The time-consuming referral of individual cases to the State Department will be eliminated. Instead, the State Department will utilize the DOJ Resource Information Center (RIC) for transferring fully current country condition information to Asylum Officers and Immigration Judges.

Improvements at the Immigration Judge Level

- Change the regulations to provide that the same I-589 asylum application form will serve as the basis for an asylum claim throughout the Asylum Officer and Immigration Judge process.

- Double Immigration Judge resources to allow for completion of most cases within 90 days from the date of referral from the Asylum Office.

- Establish master calendars devoted to cases involving asylum adjudications so that the hearings are commenced expeditiously.

- Devote additional Immigration Judge, support resources and priority to the adjudication of asylum claims, thereby focusing the maximum amount of resources to expeditiously complete these matters.

- Prioritize asylum adjudications in a similar fashion to the priority given detained cases.

- Provide additional comprehensive training to Immigration Judges in country conditions and other asylum related topics, and assure regular comprehensive use of the latest information available from the Resource Information Center (RIC).

Streamlining at the BIA Level

- Change BIA procedure, by statute, so that all appellants must first file a motion for leave to appeal. If the motion is granted by the BIA, the applicant will receive work authorization and INS will prepare a responsive brief. Motion will be denied by order, and the Immigration Judge's decision becomes the basis for judicial review.

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- Devote increased staff resources to adjudication of asylum claims.
- Modify BIA procedure by requiring priority treatment of asylum adjudications similar to treatment of detained cases in areas such as transcription, briefing schedules, and transmission of files to the Board.
- Institute last in-first out (LIFO) treatment of asylum appeals so that recent filings are expeditiously completed.

Decouple Work Authorization from Asylum Applications

- Work authorization will be decoupled from the asylum application process and provided only if asylum is granted or if the government is unable to issue a decision within an initial processing time of 180 days for a unified INS/IJ adjudication.
- There will be no work authorization while a case denied by an Immigration Judge within 180 days is under review at the BIA or on judicial review. Only upon a grant of asylum or other order favorable to the applicant will work authorization be issued.
- Withholding of work authorization is justified by our analysis of existing caseload which shows that applicants for affirmative asylum have already been in the United States an average of 14 months at the time of filing, indicating that they already have some support base.

Eliminate Boilerplate

- A widely publicized sanctions campaign against preparers of "boilerplate" applications and other fraudulent applications should be conducted. INS and U.S. Attorney teams should immediately be established for this purpose.
- Regulations to ensure that INS Service Centers immediately reject boilerplate and incomplete applications are now in the expedited clearance process.

Devote Sufficient Resources to Avoid Backlogs by Creating a System which Stays Current with Receipts"

- To address our enforcement vulnerability, the cycle of recurring backlogs and protracted asylum adjudications must be broken. Good claims must be promptly identified and

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spurious claims definitively adjudicated. This can only be done by assigning personnel and support resources sufficient to meet the full dimensions of the workload.

- A firm guideline of 90 days per administrative stage must be established.

VII. FOLLOW-UP TASKS: PROBLEMS WITH ASYLUM CANNOT BE CURED IN A VACUUM

- **Deportation and Removal must be Strengthened**

o No reform to the asylum system is complete without a credible capacity to deport denied applicants at the end of the process. INS's capacity to remove non-detained applicants is quite limited. This issue was too complex to resolve as part of this asylum initiative, but the Department of Justice, along with the State Department, should establish a task force to develop options for implementation within six months.

o In the meantime, more modest but important statutory changes that could be quickly implemented have been prepared for inclusion in the statutory package of asylum reforms.

o The State Department should, as a matter of high priority, negotiate bilateral or multilateral agreements allowing the return of asylum applicants who have spent time in another treaty-adherent country. When these are in place, such applicants could be speedily deported to the "safe third country" without our having to adjudicate the merits of the asylum claim.

- **Judicial Review of all Immigration Matters Must be Reformed**

o Cures to the administrative asylum process will be defeated unless sound reforms to judicial review of all immigration cases are instituted. Solid analysis of various alternatives should be undertaken by a combined commission involving the Department and the Federal Judiciary. Statutory language has been prepared to launch this commission.

- **The Role of Nongovernmental Organizations**

o Pro bono counsel and other nongovernmental organizations can play a useful role in an efficient asylum adjudication

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process, both in helping the applicant articulate the claim and in advising those without valid claims not to burden the system. Existing cooperative efforts in certain districts may be expandable to improve this function nationwide. The new INS commissioner will place a priority on improved coordination with NGOs.

- **Emergency Asylum Flows**

o An emergency mechanism must be available to prevent wipe-outs of the system posed by sudden influxes of asylum seekers.

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Draft 10/04/93

ASYLUM REFORM
PROPOSED STATUTORY AMENDMENTS

- **ELIMINATE BOILERPLATE AND ENHANCE ANTI-FRAUD PROVISIONS**

  Amend INA section 274C to increase penalties and to ensure that it applies to preparers and applicants using boilerplate or other fraudulent applications.

- **DECOUPLE WORK AUTHORIZATION FROM ASYLUM APPLICATIONS**

  Amend INA section 208 to clarify Attorney General's statutory authority to deny or suspend work authorization during asylum processing, within certain limits -- adjustable in AG's discretion as needed to respond to sudden surges in applications or novel forms of abuse.

- **CHANGE BIA APPEAL PROCESS**

  Amend INA to allow BIA appeal only on an approved motion for leave to appeal, thus eliminating one layer of adminstrative consideration in a great many asylum cases.

- **MAXIMIZE STRATEGIC USE OF RESOURCES TO ENHANCE ASYLUM ADJUDICATION CAPACITY AND DETER ABUSE**

  Through statute, establish congressional mandate and/or waive restrictions on hiring, space acquisition and equipment purchasing to enable fastest possible increase in capacity of asylum adjudication units (both INS and EOIR).

- **SPEED UP THE DEPORTATION PROCESS**

  - Speed initial phases. Amend INA section 242B: (1) to eliminate requirement that charging document be printed in both English and Spanish (saves time and cost, and fewer than 50% of new cases are now Spanish-language anyway); (2) to allow hearing in detained cases 3 days after service of charging document (rather than current 14).

  - Honor counsel rights but reduce attendant delays. Amend INA to allow counsel at no expense to the Government (current provision) and at no delay to the process (new) [sections 242(b) and 292], and to limit continuances for purposes of securing counsel [section 242B] -- in order to provide reasonable accommodation for applicant to seek counsel, while assuring that the process can move ahead swiftly even if counsel is not available.

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- **Speed completion of deportation process.** (1) Amend INA sections 106(a) and 242B to reduce the time permitted to file a petition for judicial review to 30 days (from 90) or 15 days (from 30) in the case of an aggravated felon. (2) Amend INA section 212(c) (waiver for permanent resident) to ban this relief for aggravated felons <u>sentenced to</u> 5 years, instead of those who <u>serve</u> 5 years (present provision often requires waiting to see just how much time will actually be served).

- **Minimize incentives for delay.** Amend INA sections 212(c) (waiver for permanent resident) and 244 (suspension of deportation) to require that the seven years needed for these forms of relief must have run before the issuance of a charging document (this change greatly reduces the utility of delays once proceedings have started, and eliminates many motions to reopen that now must be fully litigated and may be appealed).

- **Increase penalties for defaults.** Amend INA section 242B(e) to bar most forms of relief in perpetuity (rather than only for 5 years) for those who commit the specified defaults specified (e.g. agreeing to voluntary departure but failing to depart; failing to show up for asylum hearing).

- **PREPARE REFORMS OF JUDICIAL AND ADMINISTRATIVE REVIEW**

To assure sound review system for the coming decades, in light of likely immigration pressures, establish a body by statute, including DOJ and Judicial Branch representatives, to study and propose thoroughgoing reform of judicial and administrative review.

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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. memo	For Carol Rasco from Robert S. Litt and Dawn Johnsen re: Florida Health Security/Anti-Kickback Statute (3 pages)	08/05/94	P5 8023
002. memo	To LeeAnn Inadomi and Tod Stern from Carol Rasco re: Letter to Graham and Gibbons (1 page)	08/08/94	P5
003. memo	For Leon Panetta from Carol Rasco re: Request from Governor Chiles (2 pages)	08/04/94	P5 8024
004. note	Handwritten Note re: Florida (1 page)	08/01/94	P5
005. memo	For Leon Panetta from Carol Rasco re: Request from Governor Chiles (copy of #3) (2 pages)	08/04/94	P5 Dup
006. memo	For the President from Carol Rasco re: Florida Waiver w/attachment (4 pages)	07/21/94	P5
007. memo	For the President from Carol Rasco re: Florida Waiver w/attachments (6 pages)	07/21/94	P5
008. memo	For the President from Christine Varney re: Summary of Weekly Cabinet Reports July 15, 1994 through July 22, 1994 (8 pages)	07/15/94	P5
009. memo	For the President from Carol Rasco re: Waivers (1 page)	07/24/94	P5
010. memo	To Kevin Thurm from Michael Wald, Deputy General Counsel re: Beno v. Shalala (2 pages)	07/22/94	P5 8025
011. memo	To Katherine L. Darwin from Carol Rasco re: Florida Waiver (1 page)	07/21/94	P5

COLLECTION:

Clinton Presidential Records
Domestic Policy Council
Carol Rasco (Meetings, Trips, Events)
OA/Box Number: 5041

FOLDER TITLE:

Florida Waiver Briefing 5 August 1994 10:00-10:30

Rhonda Wilson

rw196

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 advise 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]

U. S. Department of Justice

8023

Washington, D.C. 20530

August 5, 1994

Memorandum for Carol Rasco
Assistant to the President for Domestic Policy

From: Robert S. Litt
Deputy Assistant Attorney General, Criminal Division
Dawn Johnsen
Deputy Assistant Attorney General, Office of Legal Counsel

Re: Florida Health Security/Anti-Kickback Statute

Florida's proposed Health Security plan provides for the use of Medicaid funds to purchase private insurance policies for individuals who are now uninsured. Florida proposes to have these policies marketed to individuals and employers by private insurance agents, who will be compensated according to the existing commercial system of commissions set by the companies, typically as a percentage of the premium amount. HHS and DOJ have concluded that this proposal violates federal criminal law.

The anti-kickback statute, 42 U.S.C. § 1320a-7b, makes it illegal to offer or pay "any remuneration . . . to any person to induce such person" either "to refer an individual to a person" for the provision of "any item or service" paid for by Medicaid or Medicare or to "arrange for or recommend purchasing" any such service. It also prohibits the receipt or solicitation of any such payment. A core purpose of the statute is to ensure that decisions about medical care for beneficiaries of Federal programs are not influenced by financial incentives from third parties.[1]

The statute's language is broad and plainly covers the payment of any commissions -- fixed or variable -- to insurance agents in exchange for enrolling customers when Medicare or Medicaid pays for the policy; such payments would be "remuneration . . . to any person

[1] Numerous prosecutions have been brought under this statute against, for example, doctors who have been paid "consulting fees" by drug companies or hospitals in exchange for prescribing particular medications or referring patients to particular hospitals.

. . . to refer an individual" to a provider paid by Medicaid. We do not understand Florida to dispute that its proposal falls within the statutory language. However, the statute permits the Secretary of HHS, with DOJ approval, to promulgate regulations that "safe harbor" conduct that might otherwise violate the statute. 42 US.C. § 1320a-7b(b)(e)(E).[2] Florida has asked for a safe harbor for its proposal.

The payment of variable commissions creates precisely the situation that the statute is designed to prohibit. An agent has an incentive to induce a customer to choose a policy that would pay a higher commission to the agent. Those companies that provide lesser benefits can spend more money on commissions, which do not benefit the consumer.[3] Thus, for policy reasons, neither HHS nor DOJ would approve a safe harbor for the present proposal. Moreover, a safe harbor for conduct that is so squarely at the heart of the statute would be difficult to defend against a claim that it is "arbitrary and capricious."

Florida argues that it has erected safeguards that will prevent "steering"; that variable commissions are needed to permit small companies to compete with the marketing strength of large companies; and that the payment of variable commissions under the Medicaid and Medicare programs is permitted in other contexts. These arguments are not persuasive:

- Florida's proposed safeguards do not change the fact that commissions constitute remuneration that is prohibited by the anti-kickback statute.

- The argument that variable commissions are needed to support small companies is in effect a concession that steering will occur regardless of Florida's safeguards and indeed is the purpose of variable commissions. Assisting small companies in this manner is an option that Congress foreclosed when it passed the anti-kickback statute.

- HHS and DOJ have never approved and were previously unaware of any cases in which payment of variable commissions to insurance agents under Medicare or Medicaid is permitted; in fact HHS refused to grant a waiver to the State of California two years ago precisely because variable commissions were permitted. HHS is looking into the situations raised by Florida to see if action is required.

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[2] Florida recognizes that its proposal does not qualify for any existing safe harbor. <u>See</u> 42 C.F.R. §1001.952.

[3] HHS has informed us, in fact, that there have been instances in Florida of plans that spend little on patients' benefits and thereby generate high profits, which could be used to pay high commissions.

HHS and DOJ have proposed to Florida that a safe harbor for the payment of fixed dollar amount commissions, related to the amount of work involved in enrolling persons, would be appropriate and legally defensible.[4] HHS and DOJ have also invited Florida to make a counter-proposal but none has been forthcoming.

[4] While even fixed dollar amount commissions would violate the letter of the anti-kickback statute, they do not appear to offend the policy underlying the statute. The payments would still induce agents to enroll individuals in a health plan, but they would not induce agents to steer individuals toward any particular plan. As a result, although inducement to participate in the Medicaid system would exist, the apparent purpose of the anti-kickback statute would not be frustrated, because agents would have no monetary inducement to recommend any particular policy over another.

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to CM

THE WHITE HOUSE

WASHINGTON

August 4, 1994

MEMORANDUM FOR LEON PANETTA

FROM: Carol H. Rasco CHR

SUBJECT: Request from Governor Chiles

Governor Chiles has asked for a joint meeting early next week with you and me. Please read below for an update on the waiver and proposed action steps.

Before I could even call the Florida Governor's D.C. office this morning to sort through your call with Buddy McKay, the director of the D.C. office called me. She had received a report on the Buddy McKay call and says he is on vacation, he had not received an update in almost 10 days. Certainly this fits as the matter was in our General Counsel's office approximately 10 days ago as Joel Klein at Lloyd's direction was assisting me in pulling Justice and HHS together.

HHS, Justice and Florida officials met about a week ago, and Florida was told by all (and our General Counsel concurred to me privately) that the issue of competitive commission rates for insurance agents is not allowable under the law. Florida left the meeting (a) very appreciative of Justice and in particular, Walter Dellinger, and their knowledge and attitude, and (b) with a request by Justice to draw up an alternative on a "range" for insurance agent commissions.

According to my staff, the indication is that Governor Chiles is adverse to the "range" as an option and has his health staff preparing another alternative. The D.C. director alluded to this when she said to me this morning that Florida does not feel HHS and probably even Justice will accept the alternative being written by Florida.

Besides the "range," the other alternative available is the "safe harbor" concept the HHS Secretary can provide Florida. Because this allows an exception to the law, the safe harbor concept is very frightening to HHS due to the onslaught of requests it might create by other states. I agree at this point with HHS in regard to the dangerous precedent that would be set in allowing a safe harbor.

Governor Chiles has, as of this morning, asked for a joint meeting with you and me next week on Monday evening late when he arrives in D.C., early Tuesday a.m., or he will stay over Tuesday evening after his fundraiser for a late meeting that evening or early Wednesday.

The D.C. director volunteered to me that she has warned Governor Chiles that White House schedules next week may be awful due to health reform escalation. In the meantime, there is nothing new you and I can say to him at this point on the commission issue given that (a) Justice, HHS and our own General Counsel have said it cannot be approved as written and (b) Florida doesn't seem to want to move on the "range" concept.

I propose:

1. We tell Florida we cannot meet Monday evening, but we will call on Monday to confirm a time for Tuesday a.m. (he is available until 10:00 a.m. Tuesday).

   or

   We can tell them you are booked solid, I will see him during one of his available times.

2. I will have a meeting tomorrow of HHS, Justice, OMB, WH General Counsel and my staff to make sure they (primarily HHS) are all once again fully aware of the need to finalize this waiver. I will call the meeting with the stated purpose of being briefed for the meeting with the Governor so there is no reason for anyone to characterize the meeting otherwise.

3. You may need to make a call to Donna Shalala after my meeting listed above (2) if I feel HHS needs further emphasis placed on the waiver.

COPY

DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of the Secretary

Office of the General Counsel
Washington, D.C. 20201

July 22, 1994

8025

TO : Kevin Thurm
Chief of Staff

Through: ES Cheley 7/22/94

FROM : Deputy General Counsel

SUBJECT: Beno v. Shalala - Whether to request rehearing

The Ninth Circuit Court of Appeals has decided Beno v. Shalala, which involved a challenge to the Department's 1992 approval of a welfare demonstration project pursuant to Section 1115 of the Social Security Act. Reversing a trial court, the appellate panel held that, under the facts of this case, the Department could not legally grant the waivers needed to implement the proposed demonstration in the absence of an adequate documentary record to support its decision. While the discussion in the opinion is broad-ranging, the actual decision is quite narrow. Specifically, the court held that because of the importance of the objections raised by critics of the demonstration and the "extraordinarily sparse administrative record" the Department must review the proposal further.

A request for a rehearing of this decision, either by the panel that decided the case or en banc by the full Ninth Circuit, must be made by Wednesday, July 27th.

The following reasons argue against requesting further review:

1. There is no basis for seeking a review only by the panel that decided the case. There are no issues that we could raise that were not addressed in the decision.

2. Successful requests for hearing en banc generally require a strong factual case, where the holding of the court raises important issues of law or the threat of significant harm to the losing party. The facts in this case may not meet this test.

   Moreover, the precise legal holding is quite limited. It only requires the Department to create some administrative record to support its decision. To make a credible case for hearing en banc, however, DOJ might need to refer to the broad language in the decision and to characterize the decision as having wider implications than a careful reading of the specific holding of the court would require. For example, it might be necessary to argue that the decision incorrectly requires the Department to develop an extensive administrative record supporting the approval of any demonstration. Filing papers that read the opinion broadly would be very undesirable since, if a rehearing is not granted, the Department would have made unnecessary concessions in this regard.

3. Because the specific holding is narrow, the Department should be able to comply with the mandate without a substantial change in policies or procedures and without increasing the time needed to review applications.

4. In fact, the standards for waiver review specified by the court are similar to those already adopted by the Department in the Section 1115 Policy Principles adopted last August. The procedures specified by the court generally are consistent with Section 1115 Procedural Principles currently being considered for adoption by the Department.

5. There is a possibility that an <u>en banc</u> review could result in a decision that is adverse to the Department on issues that were argued before, but not decided by, the current panel.

6. Even if the Circuit just affirmed the decision, this could expand the impact of the decision.

Michael S. Wald

WITHDRAWAL SHEET
Clinton Library

Collection: **Domestic Policy Council**, Carol Rasco **Archivist: rfw**
OA/Box: OA 7680
File Folder: **Arkansas Abortion 1993** **Date:** 3/25/04

DOCUMENT NO. & TYPE	SUBJECT/TITLE	DATE	RESTRICTION
1. Memo	To Susan Brophy, et al, re: draft for POTUS, 2p	4/10/93	P5 8026

RESTRICTIONS

P1 National security classified information [(a)(1) of the PRA].
P2 Relating to 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].

PRM Personal records misfile defined in accordance with 44 USC 2201 (3).

B1 National security classified information [(b) (1) of the FOIA].
B2 Release could disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA].
B3 Release would violate a Federal statute [(b)(3) of the FOIA].
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B7 Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA].
B8 Release would disclose information concerning the regulation of financial institutions [(b)(9) of the FOIA].
B9 Release would disclose geological or geophysical information

D R A F T

INFORMATION

MEMORANDUM FOR THE PRESIDENT

FROM: HOWARD PASTER

SUBJECT: FREEDOM OF CHOICE LOBBY AND THE LEGISLATIVE CALENDAR

We are coming under increased pressure from the Freedom of Choice lobby to press Speaker Foley and Majority Leaders Gephardt and Mitchell to take up the Freedom of Choice Act as early as next month. In deciding how to respond to that request, it is necessary to take a look at how the broader issues of abortion and choice will play out during the balance of the year.

It is likely that abortion-related debates and votes will develop in the House and/or the Senate on four separate appropriations bills:

- The Labor-HHS appropriations from which you have deleted the Hyde amendment and where there will certainly be a battle about the appropriate use of federal funds to finance abortions;

- The Treasury, Post Office, General Government appropriations from which you have deleted a provision that precluded health plans for federal employees from including abortion as an available benefit in such plans;

- The Defense appropriations where there is often a debate on the terms and conditions under which abortions may be performed in military hospitals; and

- The District of Columbia appropriations which President Bush vetoed because it did not limit abortion rights in the District despite the federal payment to the District.

In addition, the foreign aid bill may engender additional debate because of policy changes you have made in this area.

Also, however abortion rights are dealt with in the health care reform initiative, we know in advance there will be an intense debate on this question. Already we have health care reform allies weighing in passionately on both sides of the issue. This debate will take place in several committees throughout the hearing and mark-up process and on the floor for the balance of 1993.

In the face of all of this we are confronted with intense and growing pressure from Clinton supporters who maintain the Freedom of Choice Act (FOCA) was not taken up last year as a courtesy to the Clinton campaign. The argument being made is quite simple: you told us last fall it was a bad time to have FOCA debated in the House and Senate and we accepted your recommendation in order to help elect a pro-choice ticket. Now you owe it to us to encourage the Hill leadership to move the bill quickly. If you do not help us press for quick action on this most fundamental measure, we will then wonder what is the value of having helped to elect a pro-choice ticket.

The counter argument, made by some, is that it is not in the interests of the Administration to have a substantial national debate on abortion at a time when we want to refocus attention on the economy and health care reform. Those who hold this point of view argue that we will have a good many abortion debates and votes in the months ahead; it does not make sense for us to unnecessarily bring attention to this issue. In the words of one Member of Congress with whom I spoke, "This, along with gays in the military, will worsen your cultural disconnection with urban, ethnic, and other swing voters."

While not directly related, there is nonetheless a connection between this issue and your selection of a nominee for the Supreme Court. If you do not nominate a woman it will probably further complicate the gender politics raised by the choice advocates. There will likely be even more agitation if you nominate a man whose choice position is not clear.

While this memo -- which I showed in draft form to a number of senior staff -- is not designed to elicit a decision, I hope this background will help should you be confronted with a question on this issue before a firm policy is determined. Also, I will seek to have this memo serve as the catalyst for a staff process that will bring a more carefully delineated set of options to you.

WITHDRAWAL SHEET
Clinton Library

Collection: **Domestic Policy Council** - Rasco, Carol
Archivist: rfw

OA/Box: OA 7453
File Folder: **Chinese Immigrant Smuggling**
Date: 3/27/04

DOCUMENT NO. & TYPE	SUBJECT/TITLE	DATE	RESTRICTION
1. Memo	For V.P, Chief of Staff, et al., from Abner Mikva Re: Chinese Immigration Litigation, 1p	12/7/94	P5 8027
2. Memo	For V.P., DPC, NSC, Office of Comm. From Bernard Nussbaum, Clifford Sloan, Marvin Krislov re: Chinese Immigration Legislation, 4p	12/20/93	P5 8028
3. Memo	For POTUS from V.P. re: Chinese Smuggling, 3p	nd	P5 8029
4.Memo	For Carol Rasco from Donsia Strong re: Chinese Migrant Smuggling, 3p	5/17/93	P5

RESTRICTIONS

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

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B8 Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA].
B9 Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA].

Carol —

1) I found this folder separate from our Immigration file 8027

ATTORNEY CLIENT COMMUNI
ATTORNEY WORK PRODUCT
PRIVILEGED AND CONFIDEN

2) Steve says Counsel's office was remiss in sending this Dec. 7 memo to the DPC, and realizes we did not respond, because we didn't get the memo.

3) we should respond today.

MEMORANDUM FOR OFFICE (
OFFICE (
DOMESTI(
NATIONA
OFFICE (
OFFICE OF MANAGEMENT AND BUDGET
OFFICE OF THE STAFF SECRETARY

FROM: ABNER J. MIKVA
COUNSEL TO THE PRESIDENT

AJM

RE: Chinese Immigration Litigation

A recent order in the Golden Venture litigation requires the White House to further comply with the plaintiffs' discovery requests. As you may recall, there have been three document requests in this litigation (November 10, 1993, November 30, 1993, and May 27, 1994). The Department of Justice has advised us that responsive documents dating until October 25, 1994 should be provided. You may be reviewing some documents from July 1994 through October 1994 for the first time. Please review all of your documents to ensure that all relevant documents are produced. If there is doubt whether a document has previously been given to this office, please provide it for our review.

Copies of the document requests are attached. While reviewing your documents, please look closely at the following specific requests: November 10, 1993 Document Requests 11, 17, 18, 28, and 30; and May 27, 1994 Document Requests 5, 8, and 10. The judge has ruled explicitly that these requests calling for EOP documents are relevant and fall within the scope of the discovery.

The judge has also ruled that the following are not relevant and need not be complied with: November 30, 1993 Document Requests 1, 3, and 5; and May 27, 1994 Document Request 11.

Please provide any and all responsive documents (other than those that you previously produced) to Marvin Krislov in Room 128 as soon as possible, but not later than the close of business on Thursday, December 16, 1994.

If you have any questions on this matter, please contact me at 6-2632 or Marvin at 6-7903.

Attachments

THE WHITE HOUSE

WASHINGTON

8028

CONFIDENTIAL RJ

ATTORNEY CLIENT COMMUNICATION
ATTORNEY WORK PRODUCT
PRIVILEGED AND ~~CONFIDENTIAL~~ RJ

DETERMINED TO BE AN ADMINISTRATIVE MARKING
INITIALS: RW DATE: 3/27/04

December 20, 1993

MEMORANDUM FOR OFFICE OF THE VICE PRESIDENT
DOMESTIC POLICY COUNCIL
NATIONAL SECURITY COUNCIL
OFFICE OF COMMUNICATIONS

FROM: BERNARD W. NUSSBAUM
CLIFFORD M. SLOAN
MARVIN KRISLOV MK

RE: Chinese Immigration Litigation

In a lawsuit where Chinese nationals are asserting their right to political asylum, a federal judge in the Middle District of Pennsylvania has granted a discovery request for documents that allegedly show White House "interference" with the processing of these claims. No decisions have been made about the possibility of further challenges to the discovery order, but we need to obtain all possibly responsive documents now.

Accordingly, we are asking all White House components that may have been involved with the formulation or enunciation of policy to search your files and provide copies of any possibly responsive documents to Marvin Krislov at the Counsel's Office, 126 OEOB, no later than close of business on Wednesday, December 22, 1993. The plaintiffs' document request includes memoranda, working drafts, cables, electronic mail communications, messages, and notes of meetings. If you have any questions about this request, please contact Cliff Sloan at 7900 or Marvin Krislov at 7903.

Attached is a listing of plaintiffs' document requests applicable to the White House (as provided in court documents).

COPY

Documents Requested

1) "documents created after May 1, 1993, which direct, encourage or order that illegal Chinese immigrants will be maintained in confinement pending the resolution of their asylum applications";

2) "documents directing the Executive Office of Immigration Review and/or the Immigration Judges to expedite the asylum hearings for the Chinese nationals who arrived aboard the Golden Venture on June 1993";

3) "documents sent to the Executive Office of Immigration Review, the Board of Immigration Appeals or the Immigration Judges . . . between May 1993 to the present which discusses the political consequences of granting or denying asylum to Chinese asylum seekers":

4) "documents which communicated to the Immigration Judges that the United States considered the handling of the Golden Venture cases a priority";

5) "documents which contain references to the granting or denial of continuance requests from attorneys representing asylum applicants from the Golden Venture";

6) "documents created after June 5, 1993 which reveal the terms of an agreement between the United States and the PRC to return illegal Chinese immigrants to the PRC";

7) "documents created since June 6, 1993, stating deadlines or time requirements by which the Immigration Judges or Board of Immigration Appeals had to rule upon asylum applications or appeals from Chinese asylum applicants;"

8) "documents created since May 1993 stating the treatment received by Chinese nationals who have been deported to the People's Republic of China by the United States or Mexico":

9) "directives, orders, and policy guidelines issued by the White House to the Executive Office of Immigration Review, Department of Justice, INS, or Office of Immigration Judges, regarding the desired processing times for Chinese asylum applications filed after June 1, 1993";

10) "documents reflecting schedules or 'target dates' for deportation of Chinese detainees arriving in the United States since June 6, 1993";

11) "documents sent to the Office of Immigration Judges in Baltimore, Maryland since June 6, 1993 by the White House, stating the procedures to process and/or adjudicate asylum

applications for Chinese asylum applicants from the <u>Golden Venture</u>";

12) "documents since June 6, 1993 sent from the White House to Associate Attorney General Webster Hubbell or Attorney General Janet Reno, directing or encouraging the deportation of the asylum applicants from the <u>Golden Venture</u>";

13) "documents in the possession of . . . the National Security Council [or] the White House evidencing or stating that Chinese deportees from the United States have undergone forced sterilizations or abortions, imprisonment, re-education through labor, or physical abuse upon their deportation to the PRC since January 1, 1993";

14) "documents in the White House, discussing the impact of national media attention on the likelihood of persecution of <u>Golden Venture</u> detainees upon their return to the PRC";

15) "documents reflecting data on asylum grants and denials to <u>Golden Venture</u> passengers, and data on asylum grants and denials to Chinese applicants from January 1, 1992-January 31, 1992, and from January 1, 1993 to June 5, 1993";

16) "all White House documents stating the scope and terms of the President's new policy (announced in mid-June) designed to stop illegal immigration";

17) "all documents through which the President's policy to stop illegal immigration was communicated or transmitted to the Executive Office of Immigration Review, Board of Immigration Appeals, or the Office of Immigration Judges";

18) "documents originating within the White House . . . which were communicated to the Executive Office of Immigration Review of Immigration Judges, which discuss[] or characterize[] the credibility of the asylum applicants from the <u>Golden Venture</u>;"

19) "documents reflecting a policy decision to enforce the holding in <u>Matter of Chang</u>, BIA No. 3107 (1989) in asylum cases arising after May 1993";

20) "documents establishing and stating the plan/policy to bring Immigration Judges to York, Pennsylvania to resolve the asylum petitions for Chinese applicants from the <u>Golden Venture</u>";

21) "documents containing the name of Yang You Yi (the petitioner in the Pennsylvania case) not previously provided by the INS or State Department";

22) "all documents created since June 1, 1993 proposing or directing the development of an information program to be

broadcast/published to or within the PRC by the United States Information Agency/Voice of America stating dangers and adverse consequences of seeking illegal immigration to the United States";

23) "all documents directing the preparation of programs intended for broadcast/publication to or within the PRC, stat[ing]the policy reasons for production of these programs, and actual transcripts or recordings of programs intended for [such broadcast/publication]"; and

24) "all documents reflecting an agreement between the PRC and the United States for the production and/or broadcast of information programs in or into China (as described in #22, above)."

MEMORANDUM FOR THE PRESIDENT

8029

FROM: THE VICE PRESIDENT

SUBJECT: Chinese Alien Smuggling

You asked me to look into the immigration issue while you were gone, and I will have a report for you shortly on where we stand. However, we have an immediate problem on Chinese alien smuggling.

There are three ships of uncertain registry off Baja California on the Mexican Pacific coast. These vessels have 650 Chinese aboard, all intending to come to the U.S., apparently under the auspices of criminally organized alien smugglers. The Coast Guard -- which has heightened surveillance since your policy directive on alien smuggling -- is on scene, on board the vessels, and in control. There had been a hurricane threat; it appears now to have dissipated.

These migrants have been at sea for over six weeks in intolerable conditions, and we need to decide quickly what to do. A forceful response is necessary for deterrent value with the smugglers. The issue is also in the press and we expect public pressures to keep the migrants out but also pressures to treat them humanely. Because the issue of funding is central to any decision and because there is interagency disagreement on the money, Carol Rasco asked me to chair an interagency meeting to sort through the issues and provide you with a proposal reflecting senior level views.

All agreed that we want to avoid allowing these aliens to enter the U.S. It would cost $3.4 million to detain them while processing for exclusion, and use of personnel and detention space as well as the cost of deportation would be considerable. Two alternatives were considered: landing the migrants in Mexico and repatriating them from there by plane or meeting at sea with a US Navy amphibious ship which would repatriate the migrants.

All preferred that we approach Mexico, with refugee processing by UNHCR and repatriation by plane of those not qualifying as refugees. This will require discussions about who pays. In a June incident in the Mexican city of Calexico involving Chinese migrants, we agreed to share the costs, but the costs were higher than anticipated and we did not have additional funds for reimbursement of Mexico. Thus Mexico paid twice as much as we did. State believes that we will have to promise to pay the full cost of the aircraft for this incident ($1-1.5 million) and make some restitution for the last time (up to $400,000) in order to gain Mexican agreement. All agreed that this was necessary because we will certainly need to work with Mexico again on alien smuggling and a solid base for cooperation will be essential in the months ahead.

All agreed further that in approaching the Mexicans, we would also want to ensure that security would be adequate, given that half the detainees escaped before repatriation in the Calexico incident. We will also ask that the Mexicans seize the smuggling ships and that they apprehend and jail the crews or extradite them to the U.S. to send a strong signal to the smugglers.

There was disagreement on whether we should offer a U.S. military aircraft or hire a civilian charter. Defense felt there was no security requirement for military air, that the mission was law enforcement, and that military air ferrying smuggled aliens back to China would send an inappropriate signal. Justice believed that military aircraft would send a signal of U.S. determination on this issue and that there might be an air security problem with non-military craft. State noted that there were no aircraft security problems previously, but pointed out that chartering civilian aircraft might be difficult to effect quickly.

On funding, every agency agreed that someone else should pay. Justice argued that its Immigration Emergency Fund (which has never been used in twelve years) requires you to declare an emergency (you would indeed have to make such a determination) and that this incident did not meet that test. In addition, states like Florida, Texas, and California have complained that they have not been able to access the fund for what they would argue were more serious problems -- Haitian HIV-positive entrants and immigrant Salvadorans, Guatemalans and Cubans. Direct congressional appeals have been made recently on this issue, and it is possible that use of this fund for repatriation of Chinese and not for compensating states will anger members whose support we need on important legislative issues such as the reconciliation conference.

Finally, Justice also argued that there is no legal authority to use the Immigration Emergency Fund to pay restitution for the <u>earlier</u> Calexio incident.

State argued that its refugee and economic assistance was already programmed, that this was a law enforcement mission which should be paid for as such, and that State had paid for similar actions the last three times out of scarce funds designated for humanitarian assistance to places like Bosnia, and should not have to pay again. Defense argued that if military air was used it would have to be paid for out of operations and maintenance funds cutting further into operational readiness.

RECOMMENDATION

I believe we have the right general approach with the Mexican option so long as we are prepared to pay for the air transport this time and make some settlement for last time. I lean toward the civilian air charter rather than military air which seems inappropriate if we can avoid it.

On funding, I have three recommendations. First, we ask State to pay for whatever is necessary to resolve disagreement over the Calexico payments ($400,000); they can choose the particular account from which to draw the money. Second, we ask Justice to pay for the air transport and any other costs of this incident ($1.5 million) from the Emergency Fund. Third, because this will not be the last of these incidents, we make an additional $4.5 million available from the Emergency Fund for future alien smuggling contingencies. To deal with state concerns, we should also ask Justice to recommend some disbursement ($10-15 million) to those with immigration problems, e.g., California, Florida, and Texas (under the law, the disbursement to <u>states</u> would not require that you declare an emergency). That will leave $9-14

COPY

million left in the Fund. Then we should ask legislators from those states which received funds to sponsor legislation to replenish the fund in FY 94 so that we and they can deal with future contingencies. (We would then have to offset the replenishment with cuts elsewhere in the budget.)

If you agree on the funding, we will undertake the necessary paperwork and approach the Mexicans. On the worst case assumption that the Mexicans balk, I would recommend the military amphibious craft option, with support from Coast Guard.

Concurrences by: Anthony Lake, Carol Rasco, Leon Panetta

WITHDRAWAL SHEET
Clinton Library

Collection: **Domestic Policy Council** - Rasco, Carol

Archivist: rfw

OA/Box: OA 7453
File Folder: **Empowerment Zones [1]**

Date: 4/2/04

DOCUMENT NO. & TYPE	SUBJECT/TITLE	DATE	RESTRICTION
1. Memo	From Kumiki Gibson for Lloyd Cutler re: Community Empowerment, 1p	4/6/94	P5 8030
2. Memo	From Lee P. Brown for V.P., Carol Rasco, Bob Rubin re: Community Empowerment Initiatives, 2p	8/30/93	P5 8031
3. Fax cover	From Paul Richard For Bruce Lindsey, 1p	9/93	P5 8032
4. Memo	From V.P., Carol Rasco, Bob Rubin for POTUS re: memo establishing Community Enterprise Board, 1p	9/4/93	P5 8033
5.Memo	For V.P., et al., draft memo, 4p	9/9/93	P5 8034

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CL/CC - file

APR 7 REC'D

OFFICE OF THE VICE PRESIDENT

WASHINGTON

8030

April 6, 1994

MEMORANDUM FOR LLOYD CUTLER
SPECIAL COUNSEL TO THE PRESIDENT

FROM: KUMIKI GIBSON KG
ASSOCIATE COUNSEL TO THE VICE PRESIDENT

SUBJECT: COMMUNITY EMPOWERMENT

At the request of Jack Quinn, I am forwarding to you some background information on the Empowerment Zones/Enterprise Communities Program. Attached are (1) fact sheets on the program and the application process; (2) the President's September 9, 1993 memorandum which, among other things, directs the Secretaries of HUD and USDA (the Cabinet members with the statutory authority to select the zones and communities) to consult with the Community Enterprise Board regarding the actual designations; and (3) a draft memorandum regarding the selection and designation process.

As Jack Quinn mentioned to you, we have been struggling with the issue of whether to establish rules governing contacts between White House staff (who do not serve on the Board) and HUD/USDA regarding specific applications for designation. We welcome the advice of your office on this issue.

Please contact me if you have any questions regarding this matter (202-456-7020).

Attachments

cc: Bob Rubin (w/o attachments)
Carol Rasco (w/o attachments)
Sheryll Cashin (w/o attachments)
Paul Weinstein (w/o attachments)

COPY

...community imp. folder

OFFICE OF NATIONAL DRUG CONTROL POLICY
EXECUTIVE OFFICE OF THE PRESIDENT
Washington, D.C. 20500

AUG 30 REC'D

AUG 30 1993

8031

MEMORANDUM FOR: THE VICE PRESIDENT
CAROL RASCO, ASSISTANT TO THE PRESIDENT FOR DOMESTIC POLICY
BOB RUBIN, ASSISTANT TO THE PRESIDENT FOR ECONOMIC POLICY

FROM: LEE P. BROWN

SUBJECT: Community Empowerment Initiatives

I read with considerable interest your memorandum of August 10 (subject as above). The overall initiative, the guiding principles as defined in your memorandum, and the coordinating structure are, in my view, exactly what is needed to address the myriad problems the Nation and its cities, towns, and communities are now struggling to overcome. I heartily applaud the efforts of your working group and offer both my full support for the initiative and the complete cooperation and assistance of my Office and my staff in ensuring its success.

The level and effectiveness of community involvement are keys to the success of this initiative. The "bottom up" aspect to which you refer, that is, the principle of involving local communities in solving their own problems, is especially important. The value of this involvement, both in defining the problems that must be addressed and the priority each should be given, and in developing sensible and real world solutions have been clearly illustrated by the many successful community partnership programs now in place in our communities. Developed principally using Federal funds, these coalitions have generally been built around efforts to reduce the impact of drug use, drug crime, and the related violence that plagues many of our communities. A strong base of both experience and expertise in community empowerment are certainly to be found there.

Further, from my many years as a law enforcement official, I know the value and utility of involving the police and other components of the local criminal justice system in any effort at community empowerment. Only in that area do I see any fundamental weakness in the principles you have developed. The criminal justice system, and especially the police, working as resources for and in close coordination with all components of the community -- with families, businessmen, social service institutions, and community groups -- can play an important and, in many ways, pivotal role in any program to fully and successfully empower our communities.

COPY

For years, the infrastructure of our cities and communities has suffered a slow erosion. Now we must take the necessary steps to reverse that erosion. Progress may be slow in coming, but through realistic and coordinated efforts such as those that will surely grow from this initiative, we will have an immediate and positive effect on the lives of our citizens. Further, we will give them the power, the tools, and the resolve to ensure that these efforts are continued until the job is done.

I support your proposal to establish a Cabinet-level Community Empowerment Working Group and stand ready to provide whatever support you may require to ensure the success of this critical and challenging initiative.

Note - Community Empowerment folder

THE PRESIDENT HAS SEEN

TIME OF TRANSMISSION

TIME OF RECEIPT

Mack / GS / Gergen

— This is community

my concern on these

3 after Henry Cisneros Cabinet presentation

WHITE HOUSE SITUATION ROOM

Rasco

8832

File: Community Empowerment

PRECEDENCE: IMMEDIATE
PRIORITY
ROUTINE

RELEASER:

— Are there red flags? — Advise by this evening - B.

DTG: 061730Z SEP 93

MESSAGE NO. 03 CLASSIFICATION Unclassified PAGES 5 + cover

FROM Paul Richard (NAME) 202-456-2702 (PHONE NUMBER) Gnd Flr/ WW (ROOM NO.)

MESSAGE DESCRIPTION Memo from the Vice President re: Community Enterprise Board.

TO (AGENCY)	DELIVER TO	DEPT/ROOM NO.	PHONE NUMBER
WH	Bruce Lindsey (For the President)		

REMARKS: Bruce:

The Vice President asked that the President look at this today. Please advise as to the President's decision.

COPY

THE WHITE HOUSE

WASHINGTON

September 4, 1993 SEP 6 P1:23

MEMORANDUM FOR THE PRESIDENT

8033

FROM: THE VICE PRESIDENT
CAROL RASCO
BOB RUBIN

RE: PROPOSED PRESIDENTIAL MEMORANDUM ESTABLISHING THE COMMUNITY ENTERPRISE BOARD

Attached is a proposed Presidential Memorandum establishing an intergovernmental "Community Enterprise Board" to coordinate your Administration's community empowerment strategy. The Community Enterprise Board will be chaired by the Vice President, with Carol Rasco and Bob Rubin serving as Vice-Chairs. The Board will be comprised of the Secretaries of HUD, Agriculture, Treasury, Commerce, HHS, Interior, Education, Transportation, and Labor; the Attorney General; the Administrator of EPA; the Director of the Office of National Drug Control Policy; the Administrator of SBA; the Director of OMB; and the Chair of the Council of Economic Advisors.

The Board will serve as a forum for (1) the development of selection criteria for the designation of empowerment zones and enterprise communities, (2) the discussion of proposed exemptions from legislative and regulatory mandates requested by communities, and (3) the coordination of existing programs that promote community empowerment. Its first task will be to assist Secretaries Cisneros and Espy in the successful implementation of your empowerment zone legislation, which was signed into law as part of the Omnibus Budget Reconciliation Act.

In addition to establishing the Community Enterprise Board, the proposed Memorandum also requires the Secretaries of HUD, Agriculture, and HHS to develop (by November 1, 1993) regulations regarding the dispensation of the $1 billion in Title XX grants provided for in the empowerment zone legislation. The directive also requires the participating agencies to identify (within 15 days of the issuance of the Memorandum) existing programs for the use in empowerment zones and enterprise communities.

We hope you will be able to issue this Memorandum on Wednesday, September 9, 1993, as part of the community development event in Cleveland.

Please indicate your decision: ✓ Approve ___ Discuss Further

Thank you.

DRAFT

8034

September 9, 1993

MEMORANDUM FOR THE VICE PRESIDENT
THE SECRETARY OF THE TREASURY
THE ATTORNEY GENERAL
THE SECRETARY OF THE INTERIOR
THE SECRETARY OF AGRICULTURE
THE SECRETARY OF COMMERCE
THE SECRETARY OF LABOR
THE SECRETARY OF HEALTH AND HUMAN SERVICES
THE SECRETARY OF HOUSING AND URBAN DEVELOPMENT
THE SECRETARY OF TRANSPORTATION
THE SECRETARY OF EDUCATION
THE ADMINISTRATOR OF THE ENVIRONMENTAL PROTECTION AGENCY
THE DIRECTOR OF THE OFFICE OF NATIONAL DRUG CONTROL POLICY
THE ADMINISTRATOR OF THE SMALL BUSINESS ADMINISTRATION
THE ASSISTANT TO THE PRESIDENT FOR DOMESTIC POLICY
THE ASSISTANT TO THE PRESIDENT FOR ECONOMIC POLICY
THE CHAIR OF THE COUNCIL OF ECONOMIC ADVISORS
THE DIRECTOR OF THE OFFICE ON MANAGEMENT AND BUDGET

The Vice President and I strongly believe that the best way to serve distressed communities in urban and rural America is through a comprehensive, coordinated, and integrated approach that combines bottom-up initiatives and private sector innovations with responsive Federal-State support. Today, I direct the Federal agencies to work cooperatively to implement this approach in a way that reflects the principles of the Vice President's National Performance Review -- i.e., meeting the needs of local communities through a performance-measured, customer-driven philosophy and a cross-agency approach. I also hereby establish the President's Community Enterprise Board ("Board") to advise and assist me in coordinating across agencies the various Federal programs available (or potentially available) to distressed communities and in developing further policies related to the successful implementation of our community empowerment efforts.

COPY

The Vice President has agreed to chair this Board, and the Assistant to the President for Domestic Policy and the Assistant to the President for Economic Policy have agreed to serve as Vice-Chairs of the Board. I request the following Administration officials to serve on this Board: the Secretary of the Treasury, the Attorney General, the Secretary of Interior, the Secretary of Agriculture, the Secretary of Commerce, the Secretary of Labor, the Secretary of Health and Human Services, the Secretary of Housing and Urban Development, the Secretary of Transportation, the Secretary of Education, the Administrator of the Environmental Protection Agency, the Director of the Office of National Drug Control Policy, the Administrator of the Small Business Administration, the Director of the Office of Management and Budget, and the Chair of the Council of Economic Advisors.

The first task of the Board is to assist in the successful implementation of the Administration's empowerment zone legislation, Subchapter C of Title XIII of the Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, reprinted at 139 Cong. Rec. H5851 (daily ed. Aug. 4, 1993) ("Empowerment Zones, Enterprise Communities, and Rural Development Investment Areas"). This Act authorizes the Secretaries of HUD and Agriculture to designate certain localities as empowerment zones and enterprise communities, thus enabling them to receive certain federal funds and other benefits from the Federal Government.

Other programs, old and new, are similarly beneficial to local communities. These programs, however, form an overly complex, categorical, unworkable, and ineffective response to the needs of distressed communities. I hereby direct the Board to review these programs in order to ascertain how we can make the entire Federal effort more responsive to the needs of distressed communities. In addition, with respect to the empowerment zones and enterprise communities, I direct the Secretary of the Treasury, the Attorney General, the Secretary of the Interior, the Secretary of Agriculture, the Secretary of Commerce, the Secretary of Labor, the Secretary of Health and Human Services, the Secretary of Housing and Urban Development, the Secretary of Transportation, the Secretary of Education, the Administrator of the Environmental Protection Agency, the Director of the Office of National Drug Control Policy, and the Administrator of the Small Business Administration to (1) identify, within 15 days of this directive, existing programs that further the goals and objectives set forth in this memorandum and the Act and (2) make available, to the extent permitted by law, funds from those programs for use in implementing the strategic plans of the designated empowerment zones and community enterprises.

In order to advise and assist me regarding issues that relate to community development and empowerment, I request that each Board member --

(a) Provide me with recommendations, consistent with Section 13301 of the Omnibus Budget Reconciliation Act of 1993 ("OBRA" or "the Act"), on the criteria to be used for selection and designation of empowerment zones and enterprise communities, as set forth in Section 13301 of the Act;

(b) Identify additional legislative mandates that further the goals and objectives set forth in this memorandum and the Act and, where appropriate, develop for my consideration recommendations for further action;

(c) Identify legislative mandates that may be impeding State, local, and tribal governments from meeting the goals and objectives set forth in this memorandum and the Act, and, where appropriate, develop for my consideration recommendations for further action; and

(d) Consult with the Board regarding exemptions from regulatory mandates for which the member agency has jurisdiction and inform his or her decisions regarding any such exemptions with the recommendations of the Board.

In addition, I direct each of the agencies to cooperate fully with the Chair, the Vice Chairs, and the Secretaries of HUD and Agriculture in assisting designated zones and enterprise communities in successfully implementing their strategic plans under Section 13301 of the Act. This inter-agency effort shall, among other things, coordinate federal assistance and support within each empowerment zone and enterprise community.

In order to meet the goals and objectives set forth above, I also request the Secretary of HUD and the Secretary of Agriculture to consult with the Board regarding (1) the designation, under Section 13301 of the Act, of empowerment zones and enterprise communities and (2) possible revocation of designations, as set forth in Section 13301 of the Act.

Finally, I direct the Secretaries of HUD, Agriculture, and HHS (in consultation with the Board) to take, by November 1, 1993, the appropriate regulatory measures to ensure that the use of all Title XX grants awarded under the Act meets the criteria of Section 13761 of the Act, including, specifically, that portion of Subsection C that requires, among other things, localities to use Title XX grants (1) in accordance with the strategic plans approved by the Secretaries of HUD and Agriculture, (2) for activities that directly benefit the residents within the designated empowerment zones and enterprise communities, and (3) to promote economic independence for low-income families and individuals.

* * *

With the Board members' commitment to achieving community empowerment and to providing our local communities with a single Federal forum, we will be able to assist distressed communities and American families all across urban and rural America in obtaining economic self-sufficiency.

Thank you.

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Clinton Library

Collection: **Domestic Policy Council** - Rasco, Carol

Archivist: **rfw**

OA/Box: OA 7453
File Folder: **Empowerment Zones [2]**

Date: 3/30/04

DOCUMENT NO. & TYPE	SUBJECT/TITLE	DATE	RESTRICTION
1. Memo	For WH Staff from Lloyd Cutler re: prohibited contacts regarding the Community Empowerment Program, 2p	4/23/94	P5 803 S

RESTRICTIONS

P1 National security classified information [(a)(1) of the PRA].
P2 Relating to 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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C. Closed in accordance with restrictions contained in donor's deed of gift.

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COPY

8035

THE WHITE HOUSE

WASHINGTON

MAY 25 REC'D

Roz- The one I said I'd find for you to read- then file EZ/EC

May 23, 1994

MEMORANDUM FOR ALL WHITE HOUSE STAFF

FROM: LLOYD CUTLER LNC
SPECIAL COUNSEL TO THE PRESIDENT

SUBJECT: PROHIBITED CONTACTS REGARDING THE COMMUNITY EMPOWERMENT PROGRAM

As you may know, the community empowerment program authorizes the Secretaries of HUD and USDA to select certain localities as empowerment zones and enterprise communities, thus enabling them to receive certain grant funds and other benefits from the Federal Government. On September 9, 1993, the President, among other things, designated the Vice President to chair the Community Enterprise Board (comprised of 15 executive branch departments and agencies) to oversee the implementation of the program and directed the Secretaries of HUD and USDA to consult with the Board regarding the actual designations. We presently anticipate receiving close to 800 applications for the 104 slots; therefore, the application process will be extremely competitive.

Consistent with White House policy, referenced in prior memoranda from the Counsel's Office, and in order to ensure the fairness of this competitive grant process, the following procedures shall govern communications between White House staff and executive branch agencies regarding the community empowerment program:

1. All comments concerning particular applications should be directed to Kumiki Gibson, Associate Counsel to the Vice President. As appropriate, Kumiki will transmit the communication to the appropriate agency. With the exception of the staff of the White House offices represented on the Board, no other member of the White House staff should discuss a particular application (planned, proposed, or pending) with any agency.

COPY

2. Other communications regarding the selection process should be directed to one of the three White House offices that oversee the Board (i.e., the Office of the Vice President, the Domestic Policy Council, or the National Economic Council) -- specifically, Jack Quinn, Carol Rasco, or Bob Rubin.

3. Of course, members of the White House staff may communicate directly with executive branch agencies with respect to general policy matters or budgetary, administrative, or legislative issues.

* * *

Please cooperate in observing the guidelines discussed above. If you have any questions regarding these procedures, please feel free to contact Kumiki Gibson or me.

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Collection: **Domestic Policy Council** - Rasco, Carol

Archivist: rfw

OA/Box: OA 7453
File Folder: **Department of Energy**

Date: 4/2/04

DOCUMENT NO. & TYPE	SUBJECT/TITLE	DATE	RESTRICTION
1. Memo	From Gauldin to POTUS re: nuclear safety, 1p (partial)	4/4/93	P5/b6 8036
2. Memo	To the Secretary [DOE] from Dan Reicher, Peter Brush re: nuclear safety, 2p	4/30/93	P5 8037

RESTRICTIONS

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B9 Release would disclose geological or geophysical information

8036

MEMO

May 4, 1993

TO: President BC
THROUGH: Rasco
FROM: Gauldin

RE: Nuclear safety

This is in response to your questions about the Washington Post article on nuclear safety faxed to me yesterday.

[redacted] (b)(6)

Of 57 unsafe incidents cited in the report, all but 13 had been corrected to the satisfaction of Blush's office before the report was written. The remainder are in the process of being corrected.

As soon as she took office, Secretary O'Leary determined that the Department's safety policies and procedures were inadequate. Responsibility for various areas of safety (nuclear safety, worker safety, chemical and fire hazards, etc.) were split up between four departments that did not coordinate with each other. About 20 people were killed in the Department of Energy under Secretary Watkins and many more were seriously injured, a situation that Secretary O'Leary found unacceptable.

O'Leary has restructured the Department, combining all safety functions into one office that reports directly to her. She has directed that office to develop a comprehensive ("cross-cutting") safety policy that focuses on correcting unsafe situation rather than just counting them.

Tomorrow, May 5, Secretary O'Leary will announce a major department-wide safety initiative. Attached is a draft copy of the initiative.

COPY

April 30, 1993

MEMORANDUM TO THE SECRETARY

8037

FROM: Dan Reicher, Peter Brush

SUBJECT: Safety Initiatives

ISSUE: Suggest possible components of a Safety Initiative that could include:

1. Immediate steps that will be taken to emphasize that protection of DOE workers and members of the public residing near DOE facilities is the top priority of the Department; and
2. Announcement of elements of a longer term strategy that signals the Department's determination to establish a new era of openness in matters of environment, health and safety.

BACKGROUND: The proposed realignment has stimulated concern in some quarters that the Department has a reduced commitment to safety. The Attachment contains possible components of a comprehensive safety initiative, addressing both short and long-term actions which would underscore your commitment to strong safety programs and emphasize the benefits of the Departmental realignment as it relates to safety and health issues. This initiative was prepared with input from Environment, Safety and Health, Nuclear Safety, Defense Programs, Environmental Restoration and Waste Management, Public Affairs and Congressional Affairs. Not included is an initiative on the Nuclear Safety "White Paper" which will be briefed to you separately. The proposed initiatives which you could select include:

A. IMMEDIATE INITIATIVES

- Develop a Comprehensive Departmental Safety and Health Policy.

- Establish the Authority of the Assistant Secretary for Environment, Safety and Health to Force Cessation of Unsafe Operations.

- Rescind the 60-Day Notice Requirement established by Secretary Watkins for Environment, Safety and Health assessment.

- Develop a Departmental "Fatality Policy" with Strengthened Investigation Procedures.

- Establish Employee-Management Health and Safety Committees at All DOE sites.

- Seek to Accelerate Issuance of the Price-Anderson Nuclear Safety Rules.

- Strengthen DOE's Federal Employee Occupational Safety and Health Program.

- Call for Transition to Occupational Safety and Health Administration Regulation at DOE sites.

B. LONG-TERM INITIATIVES

- Review All DOE Classification Procedures and Policies to Enhance Free Flow of Environment Safety an Health information to the Public.

- Develop Specific Actions to Institutionalize Responsibility for Environment, Safety and Health at All Levels of DOE Including Contractors.

RECOMMENDATION: That you determine which of these are to be included in your overall Safety and Health Initiatives.

APPROVED: ____________________

DISAPPROVED: ____________________

DATE: ____________________

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Collection: **Domestic Policy Council** - Rasco, Carol

Archivist: rfw

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File Folder: **Immigration Info '92/'93 [1]**

Date: 4/2/04

DOCUMENT NO. & TYPE	SUBJECT/TITLE	DATE	RESTRICTION
1. Memo	From V.P. to POTUS re: Gov. Wilson's immigration proposals, 3p	8/11/93	P5 8038

RESTRICTIONS

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8038

August 11, 1993

MEMORANDUM FOR THE PRESIDENT

FROM: THE VICE PRESIDENT

SUBJECT: GOVERNOR WILSON'S IMMIGRATION PROPOSALS

You asked me to comment on the major immigration proposals being urged by Pete Wilson, Governor of California. In short, we should reject his recommendation to fight illegal immigration by denying citizenship to children born in the United States. Certain aspects of his proposal regarding benefits and identification cards, however, may warrant review by the inter-agency working group on immigration.

I. Denying Citizenship to Children Born in the United States

Governor Wilson contends that automatic citizenship encourages illegal immigrants to have children in this country and recommends that the Constitution be amended so as to allow us to deny citizenship to children (of illegal immigrants) who are born in the United States. (As you know, the fourteenth amendment provides: "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and the State wherein they reside.")

We must reject this idea. First, the United States has never carved out an exception to the citizenship clause of the fourteenth amendment for children of foreign nationals -- even if the parents are in the United States illegally. Second, limiting birthright citizenship because of lineage and ancestry would link us to the days before the passage of the fourteenth amendment, when this country was bound to the Dred Scott decision (the case in which the Supreme Court held that African-Americans were not "citizens" under the Constitution). Third, Governor Wilson's proposal punishes children who have done nothing to violate the laws of the United States. And finally, no evidence exists that such an amendment would actually reduce the number of children born in this country to illegal immigrant parents.

II. Denying Education and Social Services to Illegal Immigrants

Governor Wilson believes that we will reduce illegal migration if we deny illegal immigrants the right to education and other social services. This proposal is also generally unacceptable.

While there are no federal statutes that require states to provide illegal immigrants with an education, in 1982, the Supreme Court held, in Plyler v. Doe, that the equal protection clause prohibits a state from withholding education to children who are not "legally admitted" to the state. To effectuate Governor Wilson's proposal would therefore require the Supreme Court to reverse itself. In addition, to deny education to children of illegal immigrants would guarantee their membership in a permanent underclass in this country.

Illegal immigrants are also currently eligible for certain federal benefits under the Stafford Disaster Relief Act, the Medicaid laws, and a Department of Justice directive regarding public housing. The Stafford Disaster Relief Act allows an illegal immigrant to receive the following assistance during or because of a Presidential declared disaster: (1) temporary housing assistance; (2) individual family grants of up to $11,000; and (3) unemployment assistance for up to 26 weeks. (The Act explicitly prohibits discrimination based upon national origin.) No sound reason exists to tamper with this legislation, which provides assistance to individuals struck by disaster.

In addition, the 1986 Omnibus Budget Reconciliation Act amendments to the Medicaid statute make federal financial participation available for states where illegal immigrants are treated for an "emergency medical condition." The level of assistance mandated by this statute is minimal, but this aid is quite important. Without such assistance, illegal immigrants may be unable to receive treatment for serious medical problems. The Administration may nonetheless want to consider examining current practices and program guidelines so to discourage illegal immigrants from using these emergency funds for general medical assistance. I will ask the inter-agency working group to consider this issue. (The Welfare Reform Group may have already begun to consider this issue.)

Finally, in 1989, the Department of Justice found that no HUD regulation existed so as to bar illegal immigrants from public housing. (In 1988, HUD proposed a regulation restricting illegal immigrants' access to public housing; however, this regulation was never finalized because then-Secretary Kemp believed that such a regulation would add to the homeless population.) This Administration has proposed a final rule similar to HUD's 1988 proposed regulation -- i.e., the proposed regulation would prohibit illegal immigrants from renting public housing. This proposed regulation is currently under review at HUD and may be forwarded to OMB as early as September 1993.

In sum, while some evidence exists to support Governor Wilson's claim that federal benefits create an incentive for illegal migration, I believe that the Administration should focus on reviewing and enforcing employer sanctions and labor laws to deter illegal immigration. This will allow us to affect what we know to be a major incentive for illegal migration (work) without resorting to the more difficult and dangerous response of revoking federal benefits. Staff on the inter-agency working group will be working with immigrant rights groups in fashioning changes to employer sanctions and labor laws that are both acceptable and successful.

III. Identification Cards

Governor Wilson recommends that the federal government issue a national identification card to citizens and legal residents to enable the government, employers, and social service organizations to identify these individuals and to deny benefits to those without such a card -- illegal immigrants.

During the inter-agency review process on asylum reform, we discussed the concept of creating an identification card for employment. It was abandoned at that juncture for two reasons. First, the health care task force is contemplating using an identification card for health care, which may be appropriate for use in seeking employment. Second, during the 1986 and 1990 immigration reform process, the Hispanic Caucus actively fought the implementation of national identification cards. (Hispanic rights groups have assailed Governor Wilson's identification card proposal, recounting stories about Hispanic Americans who were forced to carry such cards in the 1950s and 1960s and the discrimination and police harassment that resulted.) Because this idea may have some merit in the employment context (it has been proposed, tentatively, by the Reinventing Government immigration team), I will ask the inter-agency working group to resume its review of this issue.

* * *

In sum, Governor Wilson's recommendations have nativist and xenophobic overtones and, thus, should not be endorsed. The inter-agency working group (along with other appropriate staff members) should, however, review the Medicaid provisions and the appropriateness of instituting a national identification card system.

I look forward to discussing these issues further with you.

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Collection: **Domestic Policy Council**, Carol Rasco **Archivist: rfw**
OA/Box: OA 10160
File Folder: **Medicaid Waivers** **Date:** 5/8/04

DOCUMENT NO. & TYPE	SUBJECT/TITLE	DATE	RESTRICTION
1. Memo	To Kevin Thurm from Michael Wald re: Beno v. Shalala, 2p	7/22/94	P5 8039
2. Memo	To Carol Rasco from Robert S. Litt and Dawn Johnsen re: Florida Health Security/Anti-Kickback Statute, 3p	8/5/94	P5 8040

RESTRICTIONS

P1 National security classified information [(a)(1) of the PRA].
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PRM Personal records misfile defined in accordance with 44 USC 2201 (3).

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DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of the Secretary

Office of the General Counsel
Washington, D.C. 20201

July 22, 1994

839

TO : Kevin Thurm
Chief of Staff

Through: ES Cluley 7/22/94

FROM : Deputy General Counsel

SUBJECT: Beno v. Shalala - Whether to request rehearing

The Ninth Circuit Court of Appeals has decided Beno v. Shalala, which involved a challenge to the Department's 1992 approval of a welfare demonstration project pursuant to Section 1115 of the Social Security Act. Reversing a trial court, the appellate panel held that, under the facts of this case, the Department could not legally grant the waivers needed to implement the proposed demonstration in the absence of an adequate documentary record to support its decision. While the discussion in the opinion is broad-ranging, the actual decision is quite narrow. Specifically, the court held that because of the importance of the objections raised by critics of the demonstration and the "extraordinarily sparse administrative record" the Department must review the proposal further.

A request for a rehearing of this decision, either by the panel that decided the case or en banc by the full Ninth Circuit, must be made by Wednesday, July 27th.

The following reasons argue against requesting further review:

1. There is no basis for seeking a review only by the panel that decided the case. There are no issues that we could raise that were not addressed in the decision.

2. Successful requests for hearing en banc generally require a strong factual case, where the holding of the court raises important issues of law or the threat of significant harm to the losing party. The facts in this case may not meet this test.

   Moreover, the precise legal holding is quite limited. It only requires the Department to create some administrative record to support its decision. To make a credible case for hearing en banc, however, DOJ might need to refer to the broad language in the decision and to characterize the decision as

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having wider implications than a careful reading of the specific holding of the court would require. For example, it might be necessary to argue that the decision incorrectly requires the Department to develop an extensive administrative record supporting the approval of any demonstration. Filing papers that read the opinion broadly would be very undesirable since, if a rehearing is not granted, the Department would have made unnecessary concessions in this regard.

3. Because the specific holding is narrow, the Department should be able to comply with the mandate without a substantial change in policies or procedures and without increasing the time needed to review applications.

4. In fact, the standards for waiver review specified by the court are similar to those already adopted by the Department in the Section 1115 Policy Principles adopted last August. The procedures specified by the court generally are consistent with Section 1115 Procedural Principles currently being considered for adoption by the Department.

5. There is a possibility that an en banc review could result in a decision that is adverse to the Department on issues that were argued before, but not decided by, the current panel.

6. Even if the Circuit just affirmed the decision, this could expand the impact of the decision.

Michael S. Wald

COPY

U. S. Department of Justice

Washington, D.C. 20530

August 5, 1994

8040

Memorandum for Carol Rasco
Assistant to the President for Domestic Policy

From: Robert S. Litt
Deputy Assistant Attorney General, Criminal Division
Dawn Johnsen
Deputy Assistant Attorney General, Office of Legal Counsel

Re: Florida Health Security/Anti-Kickback Statute

Florida's proposed Health Security plan provides for the use of Medicaid funds to purchase private insurance policies for individuals who are now uninsured. Florida proposes to have these policies marketed to individuals and employers by private insurance agents, who will be compensated according to the existing commercial system of commissions set by the companies, typically as a percentage of the premium amount. HHS and DOJ have concluded that this proposal violates federal criminal law.

The anti-kickback statute, 42 U.S.C. § 1320a-7b, makes it illegal to offer or pay "any remuneration . . . to any person to induce such person" either "to refer an individual to a person" for the provision of "any item or service" paid for by Medicaid or Medicare or to "arrange for or recommend purchasing" any such service. It also prohibits the receipt or solicitation of any such payment. A core purpose of the statute is to ensure that decisions about medical care for beneficiaries of Federal programs are not influenced by financial incentives from third parties.[1]

The statute's language is broad and plainly covers the payment of any commissions -- fixed or variable -- to insurance agents in exchange for enrolling customers when Medicare or Medicaid pays for the policy; such payments would be "remuneration . . . to any person

[1] Numerous prosecutions have been brought under this statute against, for example, doctors who have been paid "consulting fees" by drug companies or hospitals in exchange for prescribing particular medications or referring patients to particular hospitals.

COPY

. . . to refer an individual" to a provider paid by Medicaid. We do not understand Florida to dispute that its proposal falls within the statutory language. However, the statute permits the Secretary of HHS, with DOJ approval, to promulgate regulations that "safe harbor" conduct that might otherwise violate the statute. 42 US.C. § 1320a-7b(b)(e)(E).[2] Florida has asked for a safe harbor for its proposal.

The payment of variable commissions creates precisely the situation that the statute is designed to prohibit. An agent has an incentive to induce a customer to choose a policy that would pay a higher commission to the agent. Those companies that provide lesser benefits can spend more money on commissions, which do not benefit the consumer.[3] Thus, for policy reasons, neither HHS nor DOJ would approve a safe harbor for the present proposal. Moreover, a safe harbor for conduct that is so squarely at the heart of the statute would be difficult to defend against a claim that it is "arbitrary and capricious."

Florida argues that it has erected safeguards that will prevent "steering"; that variable commissions are needed to permit small companies to compete with the marketing strength of large companies; and that the payment of variable commissions under the Medicaid and Medicare programs is permitted in other contexts. These arguments are not persuasive:

- o Florida's proposed safeguards do not change the fact that commissions constitute remuneration that is prohibited by the anti-kickback statute.

- o The argument that variable commissions are needed to support small companies is in effect a concession that steering will occur regardless of Florida's safeguards and indeed is the purpose of variable commissions. Assisting small companies in this manner is an option that Congress foreclosed when it passed the anti-kickback statute.

- o HHS and DOJ have never approved and were previously unaware of any cases in which payment of variable commissions to insurance agents under Medicare or Medicaid is permitted; in fact HHS refused to grant a waiver to the State of California two years ago precisely because variable commissions were permitted. HHS is looking into the situations raised by Florida to see if action is required.

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[2] Florida recognizes that its proposal does not qualify for any existing safe harbor. <u>See</u> 42 C.F.R. §1001.952.

[3] HHS has informed us, in fact, that there have been instances in Florida of plans that spend little on patients' benefits and thereby generate high profits, which could be used to pay high commissions.

HHS and DOJ have proposed to Florida that a safe harbor for the payment of fixed dollar amount commissions, related to the amount of work involved in enrolling persons, would be appropriate and legally defensible.[4] HHS and DOJ have also invited Florida to make a counter-proposal but none has been forthcoming.

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4 While even fixed dollar amount commissions would violate the letter of the anti-kickback statute, they do not appear to offend the policy underlying the statute. The payments would still induce agents to enroll individuals in a health plan, but they would not induce agents to steer individuals toward any particular plan. As a result, although inducement to participate in the Medicaid system would exist, the apparent purpose of the anti-kickback statute would not be frustrated, because agents would have no monetary inducement to recommend any particular policy over another.

WITHDRAWAL SHEET
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Collection: **Domestic Policy Council**, Carol Rasco — **Archivist: rfw**
OA/Box: OA 10160
File Folder: **National Association of Community Health Centers**
Date: 5/7/04

DOCUMENT NO. & TYPE	SUBJECT/TITLE	DATE	RESTRICTION
1. Memo	To Kevin Thurm from Bruce Vladec and Michael Wald re: NACHC Lawsuit, 4p	12/7/94	P5 8041
2. Letter	From Sana Shtassel to Beth Prichard Alpert re: NACHC litigation, 12p	12/2/94	P5 8042
3. Letter	From Sana Shtassel to Beth Prichard Alpert re: NACHC litigation, 6p	12/2/94	P5 8043

RESTRICTIONS

P1 National security classified information [(a)(1) of the PRA].
P2 Relating to 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].

PRM Personal records misfile defined in accordance with 44 USC 2201 (3).

B1 National security classified information [(b) (1) of the FOIA].
B2 Release could disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA].
B3 Release would violate a Federal statute [(b)(3) of the FOIA].
B4 Release would disclose trade secrets or confidential commercial financial information [(b)(4) of the FOIA].
B6 Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA].
B7 Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA].
B8 Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA].
B9 Release would disclose geological or geophysical information

DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of the Secretary

Washington, D.C. 20201

8041

December 7, 1994

MEMORANDUM

TO: Kevin Thurm
Chief of Staff

FROM: Bruce Vladeck, Administrator
Health Care Financing Administration

Michael Wald
Deputy General Counsel

SUBJECT: Lawsuit of National Association of Community Health Centers (NACHC)

Last July, NACHC filed a lawsuit challenging five statewide Medicaid health reform demonstration projects implemented through section 1115 Medicaid waivers. NACHC asserts that the current waiver policy will drive Federally Qualified Health Centers (FQHCs) out of business. In the lawsuit, they have challenged the entire process used by the Department in reviewing and approving statewide health reform demonstration projects.

Both sides have filed motions for summary judgment and the case is ready for oral argument, which will probably occur in the next few months. Discussions with NACHC representatives, both before and after the lawsuit was filed, have not identified any mutually acceptable policies for resolving the situation. Several weeks ago, Department representatives met with representatives of NACHC to listen to their ideas regarding how we might help FQHCs. No solutions emerged from that meeting. The attorneys for NACHC have now written the attached memo (tab a) to the Vice-President, urging that the government settle the case.

This note describes the current waiver policy, presents NACHC's concerns, and outlines our position with respect to the litigation and settlement possibilities.

Current Medicaid and Demonstration Policy

Under current law, State Medicaid programs are required to provide access to services through FQHCs for the categorically needy and to reimburse FQHCs on the basis of reasonable costs. While States can obtain program waivers to restrict freedom-of-choice under section 1915(b), they cannot preclude individuals from receiving services from FQHCs. Where enrollment in Managed Care Organizations (MCOs) is mandatory, States satisfy the requirement to provide FQHC services if at least one FQHC is

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available to recipients in each service area covered under the waiver (but not necessarily in each plan). If there are no FQHCs participating in the service area, enrollees must be allowed to obtain FQHC services outside of the plan in which they are enrolled. There is no requirement that managed care plans contract with all FQHCs, except that a State cannot exclude an FQHC from participation in a managed care program if all qualified providers are permitted to participate in the program and the FQHC meets all the requirements of a qualified provider.

A key component of State health care reform demonstrations involves enrolling Medicaid eligibles in managed care organizations or health plans with which States negotiate capitation rates. Savings from managed care are used to expand Medicaid eligibility to the uninsured. In order to achieve the cost efficiencies from such arrangements, § 1115 demonstration States have asked HCFA to waive both the Medicaid cost reimbursement requirements for FQHCs and the requirements to provide access to FQHCs.

In the challenged demonstrations, HCFA, in consultation with PHS, agreed to waive these requirements as long as the State can demonstrate that individuals currently receiving their care through FQHCs will continue to have access to care through the new managed care delivery systems. If the State can demonstrate that both adequate capacity and an appropriate range of services exist for vulnerable populations, managed care plans do not need to contract with FQHCs. If the FQHCs form their own HMO, other managed care plans are not required to contract with them. If managed care plans do contract with FQHCs, the terms and conditions in the demonstrations require plans to contract either on a cost-related basis or a capitated risk basis (with appropriate adjustments for adverse selection factors). In the demonstration States, HMOs are either contracting with FQHCs generally at rates lower than costs or some FQHCs are setting up their own HMOs.

NACHC Position

NACHC argues that this policy has resulted in their client populations being enrolled in other delivery systems because of State biases against FQHCs. They further argue that those FQHCs that do enter into contracts with managed care organizations are paid substantially less than the reasonable cost reimbursement mandated under the regular Medicaid program. Thus, FQHCs' client bases and revenues per client are being substantially reduced.

The Department had a number of meetings with NACHC to explore alternatives to litigation. Prior to instituting the litigation, NACHC wanted HCFA to add a term and condition to all State health reform waivers that: (1) requires States to reimburse FQHCs on a cost basis, and (2) provides a time-limited (e.g., 6-month) transitional lock-in and allows for on-site enrollment of all current FQHC clients. This proposal went far beyond section 1915(b) program waivers (discussed above) in the proposed enrollment and lock-in provisions.

The only alternative that NACHC has offered since bringing the lawsuit is for HHS to declare a moratorium on approving any demonstrations that do not protect FQHCs and to provide the FQHCs with sufficient funding to allow them to redesign their service delivery systems so that they can become competitive with other care providers.

HHS Position

While the Department recognizes that there is value in providing some special treatment for providers giving access to vulnerable populations, the NACHC proposals are not acceptable for a number of reasons. The original proposals, requiring reimbursement on a cost basis and a lock-in, would be extremely costly and undermine potential cost efficiencies of managed care. The lock-in and on-site enrollment proposals could undermine HMO participation and the transitional lock-in limits beneficiary freedom-of-choice. The more recent suggestions, especially with respect to a moratorium, would be contrary to the goal of state flexibility and the administration's support of the demonstration process. While PHS has indicated a willingness to help FQHCs, there is no money available to support a redesign project.

It may be possible to find some other grounds for settlement, as the memo attached at tab b indicates. It is doubtful, however, that states would find any approach but the current one acceptable.

Legal Situation

It is the view of General Counsel and the Department of Justice that NACHC does not have a very strong legal claim. It is expected that the District Court will grant the government's motion for summary judgment. As the NACHC memo points out, however, if the court does decide for the plaintiffs the entire statewide health reform demonstration process would be put in jeopardy.

Attachments

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December 2, 1994

MEMORANDUM

TO: Beth Prichard Alpert
Executive Assistant to the Vice-President

FROM: Sana F. Shtasel
Feldesman, Tucker, Leifer, Fidell & Bank
202-466-8960

RE: National Association of Community Health Centers' Litigation

DATE: December 2, 1994

I. The Lawsuit

The technical name of the lawsuit is National Association of Community Health Centers ("NACHC") v. Shalala. Since the time the lawsuit was originally filed in June 1994, NACHC has been joined by the following parties: (1) The National Family Planning & Reproductive Health Association ("NFPRHA"), (2) The American College of Nurse-Midwives, and (3) the National Rural Health Association. There have, in addition, been eight state interveners who have come in on the side of the federal government. At this point, both sides have filed motions for summary judgment. We are awaiting an oral argument date from the

Court (U.S. District Court for the District of Columbia, Judge Harold H. Greene) and, it is likely that the decision will be rendered within weeks of oral argument. In short, there should be a final decision in the case somewhere between six weeks and three months from now.

II. Issues in Lawsuit

a. Parties

NACHC is an association formed in the mid-1970's to represent the interests of community health centers. Community health centers were initially created as medical analogs to the national legal services program during President Johnson's War on Poverty, and, along with Headstart has been one of that war's more notable successes. The program was shifted to HHS (HEW) in 1973 and has flourished since then, with approximately 650 centers and 2000 delivery sites in medically-underserved areas around the country. The centers serve more than 7 million patients annually, the poorest and sickest in the nation, providing comprehensive primary and preventive care and transportation, translation, and other health information and education services without regard to insurance or ability to pay. The vast majority of these patients are women and children.

The National Family Planning and Reproductive Health Association represents virtually all of the publicly-funded domestic family planning community. NFPRHA membership encompasses more than ninety percent (90%) of the 4000 recipients of Title X funds for family planning services. More than 4 million poor women, adolescents and men receive Title X services each year.

The American College of Nurse-Midwives, the professional organization of certified nurse-midwives ("CNMs"), represents more than 5000 CNMs nationwide. Care by CNMs incorporates all of the essential factors of primary care, including evaluation, assessment, treatment and referral as required, focusing on the ambulatory care of women and newborns and emphasizing health promotion, education, and disease prevention. CNMs are often the initial contact for health care delivery to women.

The National Rural Health represents some 1,700 individuals, organizations and providers nationwide, including rural health clinics, hospitals, community and migrant health centers, state health departments, university programs, physicians, nurses, dentists, non-physician providers, health planners, researchers, educators and policy makers, all of whom work to represent the health care needs of rural America and develop and promote solutions to rural health care problems at the local, regional, and national levels.

b. Legal Issues

The fundamental legal question in the lawsuit is whether HHS may use Section 1115 of the Social Security Act to launch a series of essentially replicative undertakings under the Medicaid program pursuant to which States typically initiate Statewide capitated managed care projects and, in the process, are allowed to ignore most of the numerous requirements and protections that ordinarily apply under the Medicaid Act. There are now eight states with approved Section 1115 waivers and, we believe, approximately 16 more in the pipeline.

c. Practical Issues

Included in the Medicaid Act requirements/projections that States have been allowed to ignore in the Section 1115 projects are specific requirements designed to protect the rights of patients to select community health centers and family planning organizations as their primary health care providers. Also included have been requirements guaranteeing both community health centers and family planning agencies reimbursement that adequately covers the costs of their treatment of Medicaid patients. What is happening as a result of the waiver of these requirements is that health centers and family planning agencies are losing significant levels of reimbursement, resulting both in the reduction of crucial primary care services, the laying-off of doctors and staff, and, in some cases, the closing of health centers and rural health clinics. In addition, the waivers often make many more people eligible for Medicaid - a goal that we support - but the centers cannot survive if they must treat more persons and lose money on each. As a result, the very people health care reform is intended to help are being denied essential services, their choice of providers, and their access to comprehensive, primary and preventive health care.

III. Attempts at Settlement/Political Ramifications

Prior to initiating the lawsuit, NACHC made a number of attempts to meet with and resolve its differences with Bruce Vladeck, the Administrator of HCFA. At some point, Mr. Vladeck advised the health centers that he had attempted to secure White House approval to work out some resolution but was unable to give any response. There were, and have been, implications that the Administration's relationship with the National Governors' Association is responsible for current Section 1115 policy. If the plaintiffs are successful in this lawsuit, the Administration's further utilization of Section 1115 experimental authority will be severely curtailed. Only truly unique State experiments in the Medicaid and Welfare Programs would be authorized.

Recognizing that the Administration, especially after the mid-term elections, may need a much broader license under Section 1115, the plaintiffs -- who want to support this Administration, are its natural constituents, and, indeed were embraced by the First Lady in her speech to the National Women's Law Center Wednesday evening -- have become increasingly concerned that their victory could be very injurious both to the Administration and to the poor women, children and men they represent. For this reason, we have engaged in numerous attempts to achieve a "win-win" "settlement", both with the Justice Department and HHS. In these attempts, we have sketched out a resolution well short of the necessity of a court injunction against future Section 1115 experiments. So far, however, no one with whom we have dealt has appeared empowered to sit in a room, roll their shirt sleeves up, and attempt to work out a solution that is acceptable to all concerned.

We welcome any assistance you can be in this effort. We would appreciate the opportunity to meet with you, the Office of the White House Counsel, the Office of Public Liaison and any and all other persons necessary to a resolution of this matter in which the Administration can be proud.

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State Reform Demonstrations
Policy Issues on Federally Qualified Health Centers

Introduction

The National Association of Community Health Centers (NACHC) has expressed strong concerns about the treatment of Federally Qualified Health Centers (FQHCs) under statewide health reform activities implemented through section 1115 Medicaid waivers. NACHC believes the current waiver policy will drive FQHCs out of business. Thus, they are threatening legal action unless the current policy is changed. This note describes the current waiver policy, presents NACHC's concerns, discusses their proposed change, and discusses four other options for dealing with this situation to reconcile State flexibility and cost efficiency with special treatment for a particular class of providers' populations and receiving Federal subsidies.

Current Medicaid and Demonstration Policy

Under current law, State Medicaid programs are required to provide access to services through FQHCs for the categorically needy and to reimburse FQHCs on the basis of reasonable costs. While States can obtain program waivers to restrict freedom-of-choice under section 1915(b), they cannot preclude individuals from receiving services from FQHCs. Where enrollment in Managed Care Organizations (MCOs) is mandatory, States satisfy the requirement to provide FQHC services if at least one FQHC is available to recipients in each service area covered under the waiver (but not necessarily in each plan). If there are no FQHCs participating in the service area, enrollees must be allowed to obtain FQHC services outside of the plan in which they are enrolled. While FQHCs may always assert their right to cost-based reimbursement, they are free to negotiate other payment arrangements with either the State or MCO. There is no requirement that managed care plans contract with all FQHCs, except that a State cannot exclude an FQHC from participation in a managed care program if all qualified providers are permitted to participate in the program and the FQHC meets all the requirements of a qualified provider (including requirements such as risk based reimbursement).

A key component of State health care reform demonstrations involves enrolling Medicaid eligibles in managed care organizations or health plans with which States negotiate capitation rates. Savings from managed care are used to expand Medicaid eligibility to the uninsured. In order to achieve the cost efficiencies from such arrangements, 1115 demonstration States have asked HCFA to waive both the Medicaid cost reimbursement requirements for FQHCs and the requirements to provide access to FQHCs.

HCFA, in consultation with PHS, has agreed to waive these requirements as long as the State can demonstrate that individuals currently receiving their care through FQHCs will continue to have access to care through the new managed care delivery systems. If the State can demonstrate that both adequate capacity and an appropriate range of services exist for vulnerable populations, managed care plans do not need to contract with FQHCs. If the FQHCs form their own HMO, other managed care plans are not required to contract with them. If managed care plans do contract with FQHCs, our current term and condition requires plans to contract either on a cost-related basis or a capitated risk basis (with appropriate adjustments for adverse selection factors). In the demonstration States, HMOs are either contracting with FQHCs generally at rates lower than costs or some FQHCs are setting up their own HMOs.

NACHC Position

NACHC argues that this policy has resulted in their client populations being enrolled in other delivery systems because of State biases against FQHCs. They further argue that those FQHCs that do enter into contracts with managed care organizations are paid substantially less than the reasonable cost reimbursement mandated under the regular Medicaid program. Thus, FQHCs' client bases and revenues per client are being substantially reduced. PHS is concerned about the impact of the demonstrations on FQHCs. NACHC is threatening to file suit against our waiver policy unless a satisfactory change in policy is made. The Office of the General Counsel (OGC) has reviewed the draft legal memorandum prepared by NACHC, which would be filed as part of its lawsuit. HCFA has broad discretionary authority under section 1115. Thus, we believe the Agency's current position is strong enough to withstand a legal challenge.

Since only two demonstrations have been implemented (TennCare and Oregon), we do not know whether NACHC's concerns are legitimate. Beneficiaries may be electing to receive services in sites other than FQHCs because they have more choices and prefer an alternative plan. Total revenues from Title XIX to some FQHCs may actually be increasing because of Medicaid payment for the uninsured.

NACHC wants HCFA to add a term and condition to all State health reform waivers that: (1) requires States to reimburse FQHCs on a cost basis, and (2) provides a time-limited (e.g., 6-month) transitional lock-in and allows for on-site enrollment of all current FQHC clients. NACHC's proposal goes beyond the Health Security Act (HSA) and section 1915(b) program waivers (discussed above) in the proposed enrollment and lock-in provisions. Under the HSA, health plans are required to enter into contracts or other payment agreements with FQHCs and other essential community providers who demand to participate with the health plan. Under a contract, FQHC payment must be at least as favorable as payment made to any other provider who contracts with the health plan. If the FQHC chooses not to contract with the health plan, it may choose to be paid either under the alliance fee schedule or for reasonable costs. HSA does not provide for a lock-in requirement or separate enrollment option for FQHCs, although FQHCs are sites for outstationed eligibility determinations under the current Medicaid program. While NACHC would like these requirements to apply to all previously awarded and future 1115 waivers, we believe it cannot be applied retroactively and should only apply to new FQHC requests.

Options

Balancing State flexibility and cost efficiency against special treatment for providers giving access to vulnerable populations raises difficult policy choices. These tradeoffs are discussed below in the context of NACHC's proposal (option 1), and four other options: (2) rejecting NACHC's proposal and retaining the current policy; (3) strengthening existing policy by adding more specific criteria for demonstrating access to vulnerable populations and information about contractual relations between health plans and FQHCs; (4) using the current requirements in section 1915(b) waivers and other Medicaid managed care programs; and (5) adopting the HSA requirements for FQHCs for all new 1115 waivers.

1. Accept the NACHC proposal for new projects

Pros:
- -- The NACHC proposal would ensure the continued viability of FQHCs and preclude the lawsuit by NACHC.
- -- Similar options are considered in some proposed health reform legislation.

Cons:
- -- The NACHC proposal would restrict State flexibility and would be strongly opposed by States.
- -- It is the most costly of all these options.
- -- It undermines potential cost efficiencies of managed care.
- -- There is no precedent for the lock-in and on-site enrollment, which could undermine HMO participation.
- -- It provides FQHCs with more financial protection than the HSA.
- -- The transitional lock-in limits beneficiary freedom-of-choice.

2. Reject the NACHC proposal and retain the current policy

Pros:
- -- This option provides the most state flexibility.
- -- It encourages mainstreaming of indigent

populations.

-- It encourages cost-efficiencies of managed care.

Cons: -- This option would probably be unacceptable to NACHC and would likely result in a lawsuit.

-- The viability of FQHCs may be threatened and may reduce access to health care services for some Medicaid beneficiaries.

-- It provides FQHCs with less financial protection than the HSA.

3. Strengthen the existing policy by adding specific criteria for demonstrating access to vulnerable populations and information about contractual relations between health plans and FQHCs and Rural Health Clinics (RHCs)

Pros: -- This option provides State flexibility in contractual arrangements.

-- It assures better access for vulnerable populations than the current policy.

-- It encourages mainstreaming of indigent populations.

-- It encourages efficiencies of managed care.

Cons: -- This option increases the burden on States to provide evidence of adequate capacity in the absence of FQHC contracts.

-- This would probably be unacceptable to NACHC, and would likely result in a lawsuit.

-- The viability of FQHCs may be threatened.

-- It provides FQHCs with less financial protection than the HSA.

4. Use the current requirements in section 1915(b) waivers and other Medicaid managed care programs

Pros: -- This option provides significant flexibility for States in their managed care programs.

-- This interpretation follows the letter of the OBRA 1989 and 1990 provisions on FQHCs and, therefore, does not require any waivers or new terms and conditions in the waiver approval.

-- While NACHC has serious reservations about this interpretation of the law, this option would appear to be preferable to the current terms and conditions in 1115 waivers.

-- The only FQHCs which could have their viability threatened would be those which are located in a service area where more than one health center operates (and, consequently, there is competition between FQHCs for a contract).

Cons: -- NACHC would probably find this alternative unacceptable (although preferable to current policy).

-- Where more than one FQHC operates in a service area, FQHC viability may be an issue since health centers may be excluded from Medicaid if they do not accept risk.

-- There is less protection for FQHCs than in the HSA.

5. Adopt the HSA requirements for FQHCs for all new 1115 waivers

Pros: -- The policy is consistent with the Administration's health care reform legislation.

-- It ensures continued viability of FQHCs for a transition period.

Cons: -- This option may not be acceptable to NACHC, but would be more acceptable than options 2 or 3.

-- It could decrease savings from managed care.

-- It limits State flexibility.

-- It could discourage managed care plan participation.

Recommendation

Options 4 and 5 are consistent with Administration policy and would be more acceptable to the NACHC. However, the states may feel that options 4 and 5 don't give them enough flexibility.

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December 2, 1994

MEMORANDUM

TO: Beth Prichard Alpert
Executive Assistant to the Vice-President

FROM: Sana F. Shtasel
Feldesman, Tucker, Leifer, Fidell & Bank
202-466-8960

RE: National Association of Community Health Centers' Litigation

DATE: December 2, 1994

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b. Legal Issues

The fundamental legal question in the lawsuit is whether HHS may use Section 1115 of the Social Security Act to launch a series of essentially replicative undertakings under the Medicaid program pursuant to which States typically initiate Statewide capitated managed care projects and, in the process, are allowed to ignore most of the numerous requirements and protections that ordinarily apply under the Medicaid Act. There are now eight states with approved Section 1115 waivers and, we believe, approximately 16 more in the pipeline.

c. Practical Issues

Included in the Medicaid Act requirements/projections that States have been allowed to ignore in the Section 1115 projects are specific requirements designed to protect the rights of patients to select community health centers and family planning organizations as their primary health care providers. Also included have been requirements guaranteeing both community health centers and family planning agencies reimbursement that adequately covers the costs of their treatment of Medicaid patients. What is happening as a result of the waiver of these requirements is that health centers and family planning agencies are losing significant levels of reimbursement, resulting both in the reduction of crucial primary care services, the laying-off of doctors and staff, and, in some cases, the closing of health centers and rural health clinics. In addition, the waivers often make many more people eligible for Medicaid - a goal that we support - but the centers cannot survive if they must treat more persons and lose money on each. As a result, the very people health care reform is intended to help are being denied essential services, their choice of providers, and their access to comprehensive, primary and preventive health care.

III. Attempts at Settlement/Political Ramifications

Prior to initiating the lawsuit, NACHC made a number of attempts to meet with and resolve its differences with Bruce Vladeck, the Administrator of HCFA. At some point, Mr. Vladeck advised the health centers that he had attempted to secure White House approval to work out some resolution but was unable to give any response. There were, and have been, implications that the Administration's relationship with the National Governors' Association is responsible for current Section 1115 policy. If the plaintiffs are successful in this lawsuit, the Administration's further utilization of Section 1115 experimental authority will be severely curtailed. Only truly unique State experiments in the Medicaid and Welfare Programs would be authorized.

Recognizing that the Administration, especially after the mid-term elections, may need a much broader license under Section 1115, the plaintiffs -- who want to support this Administration, are its natural constituents, and, indeed were embraced by the First Lady in her speech to the National Women's Law Center Wednesday evening -- have become increasingly concerned that their victory could be very injurious both to the Administration and to the poor women, children and men they represent. For this reason, we have engaged in numerous attempts to achieve a "win-win" "settlement", both with the Justice Department and HHS. In these attempts, we have sketched out a resolution well short of the necessity of a court injunction against future Section 1115 experiments. So far, however, no one with whom we have dealt has appeared empowered to sit in a room, roll their shirt sleeves up, and attempt to work out a solution that is acceptable to all concerned.

We welcome any assistance you can be in this effort. We would appreciate the opportunity to meet with you, the Office of the White House Counsel, the Office of Public Liaison and any and all other persons necessary to a resolution of this matter in which the Administration can be proud.

Withdrawal/Redaction Sheet
Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. memo	To Carol Rasco from Jose Cerda III re: Meeting with National Security Director Tony Lake (1 page)	04/18/93	P5

COLLECTION:

Clinton Presidential Records
Domestic Policy Council
Carol Rasco (Meetings, Trips, Events)
OA/Box Number: 4591

FOLDER TITLE:

Tony Lake 4-19-93 1:30-2:00 p.m.

Rhonda Wilson

rw169

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 advise 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(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]

THE WHITE HOUSE

WASHINGTON

April 18, 1993

MEMORANDUM FOR CAROL RASCO

FROM: **Jose Cerda III**

SUBJECT: **Meeting with National Security Director Tony Lake**

The National Security Council (NSC) has been conducting a comprehensive review of U.S. counternarcotics policy (PRD-18) that is almost complete. Prompted by career NSC staff in charge of the review process, NSC Director Tony Lake scheduled this meeting with you to help get an idea of what the domestic component of a National Drug Control Strategy will be. International programs make up only 12% of the overall drug budget, and NSC needs to know the greater context into which its drug policy recommendations should fit.

The NSC is also concerned that delays in appointing a Drug Czar and in defining a national strategy may result in the budget process determining our drug policy. In fact, with OMB PAD Chris Edley initiating a domestic drug policy review, this may already be happening. NSC wants to make clear at this meeting that drug policy should be driven by DPC and NSC jointly -- not by OMB, ONDCP or any other agency.

Career NSC staff has given every indication that they are sensitive to President Clinton's campaign promises and to his criticisms of the former administration's drug policies. They have talked to me about critically reviewing all international programs to see which ones really work, and it seems as if they are prepared to recommend a more limited and focused approach to international drug control. If so, this should dovetail nicely with increased demand reduction efforts.

However, I remain concerned about the PRD's ultimate findings. The process has been driven by career staff in traditionally independent agencies -- NSC, DoD, State, DEA, etc -- and characterized by a lack of political leadership. No high-level presidential appointee seems to be leading the review. Instead, the review has relied heavily on interagency working groups that are a carryover from the previous administration, and I wonder if these groups are capable of, or have any incentive to, critically assess the value of their own policies and programs.

I have attached some talking points that suggest major tenets for the domestic component of a new drug strategy. I hope this information is helpful.

Withdrawal/Redaction Sheet
Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. memo	To Chris Jennings from Carol Rasco re: Hubert Mayes (1 page)	05/18/93	P5

COLLECTION:

Clinton Presidential Records
Domestic Policy Council
Carol Rasco (Meetings, Trips, Events)
OA/Box Number: 4592

FOLDER TITLE:

Hubert Mayes 5-19-93 4:30 pm

Rhonda Wilson

rw157

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]
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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)]

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Faxed 5/19 MK

THE WHITE HOUSE

WASHINGTON

TO: Chris Jennings

FROM: Carol H. Rasco CHR

SUBJ: Hubert Mayes

DATE: May 18, 1993

Hubie Mayes sent me a Fed. Ex. package yesterday with a letter for Mrs. Clinton, you, and me...I forwarded yours to you via messenger yesterday afternoon. In the meantime, he has called insisting he has to have fifteen minutes with me tomorrow...knowing he would badger Mrs. Clinton's scheduling people if I did not give him an appointment I have given him 15 minutes at 4:30 p.m. on Wednesday, May 19. Rosalyn says he will be bringing other people also. Can you tell me whom should sit in with me? Thanks.

Roz — Track Chris down on Wed. a.m. to see if he has advice on person — x2774

Gary Claxton (401-4507) will attend. I asked him to come by @ 4:20 for briefing.

COPY

Withdrawal/Redaction Sheet
Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. memo	To Howard Paster from Carol Rasco re: Crime Bill Coordination (3 pages)	10/16/93	P5
002. memo	To Carol Rasco from Bruce Reed/Jose Cerda re: Crime Agenda (3 pages)	n.d.	P5

COLLECTION:

Clinton Presidential Records
Domestic Policy Council
Carol Rasco (Meetings, Trips, Events)
OA/Box Number: 4593

FOLDER TITLE:

Crime Coordinating Meeting Roosevelt Room 10-12-93 4:00 pm

Rhonda Wilson

rw171

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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EXECUTIVE OFFICE OF THE PRESIDE

16-Oct-1993 12:20pm

TO: (See Below)

FROM: Carol H. Rasco
Economic and Domestic Policy

SUBJECT: please see attached memo

TO: Howard Paster

FROM: Carol H. Rasco

SUBJ: Crime Bill Coordination

DATE: October 15, 1993

My first reaction to the receipt of the memo from Assistant Attorney General Anthony this evening was one of shock. I thought the Clinton Administration was one promoting collaboration, continuity and cooperation; certainly in our "war room" efforts to date that has been the operational premise. To exclude the policy staff which worked on the development of the crime program and legislation is a serious oversight. I can only assume upon reflection that neither you nor others from the White House listed on the "core group" were consulted as the list was formulated, as I am sure if you had been consulted you would have at least had the courtesy to notify me as to the reason for the exclusion of the Domestic Policy staff.

I realize you have felt the coordination was not occurring as it should on this issue and that is exactly why after you discussed it with me that the DPC staff convened the meeting on the matter earlier this week. I also felt your suggestion in the meeting to appoint DOJ as responsible for the "core group" was entirely proper. Both because you and I had discussed this issue of coordination prior to the meeting and your name is listed first for the core group, I have addressed this memo to you. Further, because I consider this an internal matter, I will distribute it to only the White House portion of the distribution list.

I felt letting this matter pass without comment - when the time for action is so short and the issue of the crime legislation so critical to the President's agenda for meeting the needs of America - would be a serious act of omission on my part. I hope this manner of "coordination" is not a trend in operational procedures for the future.

Thank you.

cc: White House distribution list for 10/15/93 memo referenced above

Distribution:

TO: Howard Paster
TO: Thomas F. McLarty
TO: David R. Gergen
TO: George Stephanopoulos
TO: John Podesta
TO: Mark Gearan
TO: Rahm Emanuel
TO: Bruce N. Reed
TO: Jose Cerda, III

CC: Neel, Roy M.
CC: Charles W.(Bill) Burton
CC: Jody A. Greenstone
CC: Marcia L. Hale
CC: Alexis Herman
CC: Christine A. Varney
CC: Margaret A. Williams
CC: Margaret J. Myers

TO: Carol
FR: Bruce/Jose
RE: Crime Agenda

Here's a summary of what we hope to accomplish this afternoon. A draft agenda is attached.

I. LEGISLATIVE STRATEGY

– **Legislative Affairs:** Develop list of Members for Attorney General and White House staff to target. Include key House Judiciary Members, Senators required to pass Brady, moderates in both houses, and other lists deemed appropriate.

- The key here is to ask Howard's help in (1) expanding support for the crime bill, (2) drafting a list of members for the President to call, and (3) reaching out to the Black Caucus in some way. Howard has been reluctant to work for anything other than Brady, and he is still telling Brady supporters on the Hill that he will get the President to publicly commit to separating Brady. We also need to work with Sheila Anthony to make the most of Justice's lobbying efforts.

- **EXPANDING SUPPORT** -- In the House, expanding support means working with moderate Democrats early to make sure that they don't jump to the Republican side. This means forging an alliance with House Judiciary moderates (Brooks, Schumer, Hughes, Bryant, Sangmeister, Mazzoli) and getting them to help us get other moderates on board -- <u>before the crime bill goes to the floor</u>. It also means getting Howard or Lorraine to develop a target list for many of the more moderate freshmen Members.

- **MEMBERS FOR PRESIDENT TO CALL** -- We have a preliminary list of Senators for the President to call on Brady and Habeas, as well as list of moderate House Democrats. We need to find a way to get these names incorporated into the list Howard passes on to the President.

see above:
Minimum mandatory
Drug treatment

- **REACHING OUT TO THE BLACK CAUCUS** -- If we do not make an effort to reach out to the Black Caucus, they are bound to publicly attack us when the crime bill goes to the floor. We need to get Howard or Lorraine working on a strategy to avert such a situation.

Mayor Reardon has said will help

- **REACHING OUT TO REPUBLICANS** -- In the Senate, Biden has been talking with Republicans about what it would take to get their support. In the House, Brooks does not intend to reach out to the Republicans. Howard should develop a target list of Republicans, too.

Minimum Mandatory.

Want More

May add immigration

COPY

II. OUTREACH

Pres. has to know what's he's selling them.

– **Intergovernmental:** (1) Develop list of State Attorneys General and major cities' District Attorneys for the President, the Attorney General and White House staff to target. Get as many of the Democratic State AGs ~~as possible to~~ express their support for the Biden–Reno habeas corpus compromise. Generate a list of local prosecutors willing to endorse the Reno–Biden habeas deal. (2) Garner bipartisan crime bill endorsements from Mayors, Cities, and -- if possible -- Governors. If critical mass is reached, schedule an endorsement event announcing the bipartisan support of state and locals for the crime bill.

23 AG's

- This is one of the most important pieces of the public outreach strategy, particularly if we can get bipartisan support. Thus, we need to get Marcia Hale to personally take the lead on this. Justice may want to take the lead on this piece, but it should be left to Marcia.

– **Domestic Policy:** Invite network of Police Chiefs that have helped us develop the Community Policing Initiative to a "CEO Lunch". Community Policing could be the topic of discussion.

- We will take the lead here. There are a whole host of police chiefs that have been helpful to us and friendly to our proposals. Most of these chiefs are at the forefront of community policing.

– **Public Liaison**: Solidify crime bill endorsements from Police groups in general, community groups, victims groups, and any other appropriate constituency groups.

- Steve Hilton of Public Liaison has been too busy to really to any outreach to the various police groups. And, given that he's in the NAFTA war room, it doesn't seem likely that he will have any time soon. If we can't get Alexis or Steve to do the job here, then we need to get Justice to conduct this outreach. The AG has a good relationship with most of the law enforcement groups, and she may be the best one to squeeze endorsement letters out of them.

– **Chief of Staff:** Meet with Police Groups that supported Clinton–Gore to ensure their continued support of the crime bill.

- Our police union friends -- NAPO, IBPO, and IUPA -- are threatening to not support the crime bill because it does not contain the Police Officers Bill of Rights, a controversial bill granting certain labor protections to rank–and–file cops. While we can't afford the police unions jumping ship, neither can we include the POBR in the crime bill. This problem require some type of political solution.

III. COMMUNICATIONS

- **Communications/Scheduling:** (1) Capitalize on "Security" theme to push crime bill and Brady whenever possible during the next few weeks. (2) Add crime events to the schedule -- such as Chief's luncheon, Mayors endorsement event, announcement of Justice Department Police Hiring Supplemental Grants, release of interim drug strategy, and a public call to pass the crime bill when it is first taken up by the House and Senate.

- We need to work with David Gergen and Roy Neel to make sure that the President's schedule allows for some crime events over the next few weeks. Bush always set the political context during past crime bill debates, and it will be difficult for us to set the context -- cops and guns -- without some Presidential involvement.

- **Justice:** Ensure that the AG's public appearances, speeches, interviews, etc., are utilized to build public support for the crime bill.

- Biden and Brooks would love for the AG to even mention the crime bill in her public appearances and interviews. She will be giving several major speeches in the upcoming weeks, and we need to get her to commit to publicly supporting the crime bill. In particular, she is considering giving a major crime speech this Wednesday, and she will be speaking at the International Association of Chiefs of Police (IACP) the week the crime bill is going to be considered.

- **ONDCP:** Ensure that the Director's public appearances, speeches, interviews, etc., are utilized to build support for the crime bill.

- Lee Brown has not been publicly speaking about the crime bill. Much of his Interim Drug Strategy directly relates to the crime bill, and we need to make sure that he's out their supporting the bill. This shouldn't be too difficult: as a past president of IACP, Brown worked for the passage of a very similar crime bill some years ago. Brown will also address the IACP the week the crime bill is taken up.

- **Cabinet Affairs:** Ensure that other Cabinet Members (i.e., Secretaries Cisneros and Reilly) are as supportive of our crime bill efforts as possible.

- We should explore opportunities for Secretaries Rilley and Cisneros to help push the crime bill.

Withdrawal/Redaction Sheet
Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. note	To Carol Rasco from N.H. re: HUD (1 page)	n.d.	P5
002. list	Re: HUD-New Hampshire (1 page)	n.d.	P5
003. fax	To Nancy Hernreich from Hal Hunnicutt re: Florida lawsuit against HUD (1 page)	03/22/94	P5, P6/b(6)
004. note	Re: HUD, Hal Hunnicutt (1 page)	n.d.	P5, b(6)
005. letter	To POTUS from Hal Hunnicutt re: HUD (1 page)	03/04/94	P5
006. letter	To POTUS from Hal Hunnicutt re: HUD (3 pages)	2/12/94	P5, P6/b(6)
007. note	For POTUS re: HUD, Hal Hunnicutt (1 page)	n.d.	P5
008. fax	To Nancy Hernreich from Hal Hunnicutt re: Henry Cisneros (1 page)	05/12/94	P5, P6/b(6)

COLLECTION:

Clinton Presidential Records
Domestic Policy Council
Carol Rasco (Meetings Trips Events)
OA/Box Number: 5040

FOLDER TITLE:

Telephone Meeting: Secretary Cisneros (will call) 6-1-94 2:30-2:45

rw172

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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b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

THE WHITE HOUSE
WASHINGTON

Carol Rasco —
Can you have someone look into this HUD grant for New Hampshire —

This is all done — the Pres' letter —

N.H.

COPY

III. PARTICIPANTS

The following New Hampshire media will be represented:

cc Craig Smith

<u>Television Interview (Oval)</u>

WMUR - TV (ABC)	Jack Heath

<u>Print & Radio Roundtable (Cabinet Room)</u>

Manchester Union Leader	John DiStaso (2/18 is his 40th birthday)
Concord Monitor	Craig Timberg
Portsmouth Herald	Jeannine Clegg
Keene Sentinal	Patricia Ferrier
Boston Globe	Michael Kranish
Claremont Eagle	Andrew Nelson
WKXL - Radio	Randi Goldberg
WZID - Radio	Sally Dionne
WKNE - Radio	Tracy Caruso

IV. PRESS PLAN

Both events open press. Still photographers in Print/Radio roundtable.

V. SEQUENCE OF EVENTS

10:45 - 11:00 am	Briefing & makeup for interviews - Oval Dining Room
11:00 - 11:20 am	Interview with WMUR - Oval
11:25 - 12:10 pm	Print & Radio roundtable - Cabinet Room

VI. REMARKS

None prepared.

* $750,000

Rural

80%

Bill -

Please recall & send back to HUD the "Wind rule" for Zones II & III for further review of the economic impact of the final rule of the Industry, it's employees, and lower income consumers. This could cost thousands of jobs in these areas.

Also, check into the availabilty of alternate forms of housing, for the lower economic sector, who would no longer be able to afford manufactured Housing. This includes vast minorities, especially in the Carolinas and Texas. Please give this strong consideration, as I know you will. I see no way it can hurt you politically. You are only trying to make sure that we don't totally close the "American Dream" to our citizens on a knee jerk reaction by Cisneros & Staff at HUD. This rule in no way assures anyone of inhabiting a "Hurricane Safe" residence.

Your Friend

Hal

COPY

[illegible] (3) **FYI only.** Hal Hunnicutt sent me a note. He is still livid about Henry Cisneros' decision about manufactured housing and wants you to know that he thinks Cisneros has turned his back on his own people and was a poor choice for HUD.

cc: DC Rasco

dp

Withdrawal/Redaction Sheet
Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. memo	To Marcia Hale from Leon E. Panetta re: April 29th Tribal Meeting with the President (partial, p. 5) (1 page)	04/13/94	P5
002. memo	To vida Benavidez re: White House Meeting with Tribal Leaders (8 pages) (8 pages)	04/27/94	P5

COLLECTION:

Clinton Presidential Records
Domestic Policy Council
Carol Rasco (Meetings, Trips, Events)
OA/Box Number: 7262

FOLDER TITLE:

Tribal Leaders Mtg. 4-29-94 [1]

Rhonda Wilson

rw177

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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Indian Gaming:

> Gaming operations provide significant revenues to many Tribes, but have also caused much controversy on the issues of Tribal sovereignty and States rights.

There are over 300 gaming operations on 103 Indian Reservations (one third of all Reservations). In 1991, $15 billion was wagered at Indian gaming operations (80 percent annual average growth since 1985 -- 5 percent of total U.S. wagerings). After paying winnings, this provided Tribes with $1.5 billion in gross revenues. Wagerings and Tribal revenues are expected to continue increasing rapidly.

Many Tribal leaders regard this as a major opportunity with which to fund Tribal initiatives, provide employment opportunities, and promote economic development. A limited number of studies show that gaming has offered on-reservation economic and employment opportunities, for both Indians and non-Indians, while providing Tribes with income to carry out high priority programs and supplementing funds received from the BIA and other Federal sources.

Federal Indian gaming law stipulates that in States where any type of gambling is legal, Tribes may operate any type of gambling operations (not only those types allowed by the State), subject to approval by the State and the Indian Gaming Commission. Allowing Tribes to run gaming operations in only some States creates a "haves" and "have nots" situation among Tribes. Those with gaming operations are said to be very much divided, based on what games they operate and whether they are run fully by the Tribe or contracted to non-Tribal members.

<u>Indian Gaming -- Tribal Concerns:</u> According to BIA's gaming office, a major concern of Tribal leaders is that they've unsuccessfully tried (at least twice) to meet with the President on Indian gaming, while the President has met with all Governors various times, on many issues including gaming. BIA's Gaming Office voiced concern that gaming could "steal the show" at the April 29 meeting if Tribes were allowed to set the agenda.

Another significant concern is discussion within the Administration of a possible 4 percent Federal tax on gaming income, as a source of funding for welfare reform, while State lotteries would be exempt.

Additionally, Tribes are very much concerned that the Governors are said to be trying to amend the Indian Gaming Regulatory Act such that Tribes could run only those games allowed by the State in which their Reservation is located.

MEMORANDUM

To: Vida Benavidez

Re: White House Meeting with Tribal Leaders

Date: April 27, 1994

As you requested, here are some thoughts about the upcoming tribal leaders meeting at the White House.

1. Context of the Meeting

The President's meeting with the tribes is premature. It seems driven primarily by a desire on the part of certain White House staff not to be "shown up" by the Justice Department's conduct of the "Listening Conference" with the tribes in Albuquerque next week. As a result, the President is about to meet with the leaders of the tribes, but has nothing of substance to say. We understand that the Interior Department earlier this week was provided with copies of two "Executive Memoranda" prepared by the White House and proposed to be issued by the President at the meeting with the tribal leaders. We understand further that the memoranda--which deal with the Fish and Wildlife Service's handling of Indian requests for eagle feathers for religious use and the "government-to-government relationship" between the tribes and the United States--have little real content and serve primarily as reaffirmations of policies put in place by previous administrations.

Quite frankly, the tribal leaders deserved better. Every President since Eisenhower has issued an Indian policy; as a result, tribal leaders are unimpressed by such policies unless they have genuine content. While we have not seen the draft Executive Memoranda, if their content is as lame as has been described to us, they are hardly worth issuing. The reality is that the President likely will "get away with" issuing them--in the sense that there will be no immediate adverse reaction at the White House meeting--because the tribal leaders will not have had the opportunity to study and respond to them. However, by next week's Listening Conference, these Executive Memoranda will have been studied and analyzed; if their content is not sufficient, Secretary Babbitt and Attorney General Reno will be left to take the heat.

It would have been far better for the President to have directed the cabinet members to conduct meetings with the tribes, then report to the White House their suggestions for a comprehensive, meaningful Clinton

Indian policy. Then the White House could develop such a policy and invite the tribes for a triumphant meeting at which the new policy would be announced. Instead, the White House is proceeding "bass ackwards"; it is issuing a policy before it knows anything of the subject matter. It is not surprising that the Executive Memoranda should be toothless; no-one in the White House has Indian affairs experience, and the field is much too complex for anyone to have mastered it in the fifteen months the President has been in office. Moreover, by cutting Secretary Babbitt and Assistant Secretary for Indian Affairs Ada Deer out of the process of developing these Executive Memoranda, White House staff have wasted the abilities of the two people in the Administration who have the most knowledge and experience in Indian affairs. If the President pulls this meeting off without some serious negative incidents, it will be due solely to the enormous force of his personality and the mesmerizing effect of White House pageantry. These effects will not last long, and will most assuredly do us no good in 1996.

Nevertheless, the show must go on at this point. Our strong advice is that the President treat this meeting as the beginning of the process of developing a comprehensive Indian policy. He should announce to the assembled tribal leaders that he has directed the cabinet to conduct meetings with the tribes to receive tribal input on a Clinton Administration Indian policy. The process can start with the Listening Conference next week, but must be followed by similar events with all relevant officials in the Administration. The Listening Conference should be followed up with similar meetings with Secretary Shalala, Secretary Brown, Secretary Bentsen, Secretary Sisneros, Secretary Pena, Secretary Reich, Director Panetta, and Administrator Browner. After those meetings, the Administration will have the information it needs to issue a meaningful Indian policy statement that actually promises change. Under no circumstances must tribal leaders be given the impression this week that this is the least time they will see the President, or that the President, with the issuance of the Executive Memoranda, considers his work in Indian affairs to be done.

2. The Clinton Administration's Record in Indian Policy

The upcoming meetings with the President on April on 29 and with Attorney General Reno and Secretary Babbitt in Albuquerque on May 5 and 6 will go far in eliminating the existing perception that the Administration is disinterested in Indian policy. However, do not think that a meeting with the President solidifies Indian support for the Administration. Indians have had meetings at the White House before. In 1976, President Ford invited all tribal leaders to the White House, grossly adding at the bottom of the printed invitation, "Traditional Costumes and Dress Welcome." Needless to say, the resulting "photo op" event was entirely unsatisfactory.[1] In 1990, at the urging of Senators Inouye and McCain,

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[1] By the way, can it possibly be that the tribal leaders are having to pay to attend this event? We have heard that they are being charged $100 apiece to defray the costs of the event. If this is so, we cannot begin to describe how inappropriate that is. Does the White House charge

President Bush met for half an hour with a delegation of tribal leaders, resulting in the issuance of a mushy "re-commitment" to President Reagan's Indian policy statement calling for a "government-to-government relationship" with the tribes. In 1991, President Bush hosted the White House Conference on Indian Education. Unfortunately, the President's invitees were largely drawn from his list of Indian contributors to his campaign (a short list if ever there was one), and the conference was regarded as yet another meaningless event.

At this point, tribal leaders are excited and hopeful, but wary, about the upcoming meetings. The honor of meeting with the President is offset by the fact that the Administration has done nothing specific in Indian policy. You must not expect a love fest. Tribal leaders are serious politicians with very specific needs and expectations. Most of all, they want respect not for their personal offices but for the issues that concern them. They know that no new Administration can master the intricacies of Indian policy in a year. If the White House admits that and establishes a process for the development of an Administration Indian policy, you will have demonstrated that respect. The makings of a sound process are already in the works. The meeting with the President must not be a culmination, but rather the beginning of the Administration's process of developing an Indian policy. At this point, though, a general statement on "trust responsibilities" and the "government-to-government relationship" will not do, except as a starting point.

a. Proposed Cuts in the Indian Budget

While Indian Country is not about to abandon Clinton, there is broad disappointment with the Administration's performance to date in the area of Indian policy. In fact, the Administration's Indian policy to date can be said to be the appointment of Assistant Secretary of the Interior Ada Deer and Indian Health Service Director Miguel Trujillo and the cutting of their budgets. The President can expect that tribal leaders will criticize him for the budget cuts. The President should understand that, while Indians understand the budget deficit situation, they do not believe the budget should be balanced disproportionately at the tribes' expense. A look at the specifics of the cuts shows a rather philosophically bankrupt approach to the budget cuts.

In the BIA budget, the cuts come in three primary forms: (1) zeroing out economic development grants and direct loans to tribal and Indian-owned enterprises; (2) transferring BIA personnel operations to the Interior Department; and (3) zeroing out the Navajo-Hopi Rehabilitation Fund. The economic development grant and loan programs are one of the very few true success stories in the BIA's programs. The decision to eliminate them is absolutely inexplicable as sound policy; these programs, as well as the guaranteed loan program administered by BIA, should be expanded, not cut, due to the extreme shortage of investment capital on the reservations.

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representatives of other governments for the privilege of a White House meeting?

The transfer of the BIA personnel department to Interior is regarded as an accounting ruse that literally takes money out of the tribes' pockets. Interior has been feeding on the Bureau of Indian Affairs for the last twelve years; the number of personnel transferred from the Bureau to the Department is offensive not only for its quantity, but because: (1) the Department is not required to grant Indian preference in employment, only the BIA is, and the transfers are regarded as a means of undermining Indian preference; and (2) under the tribal self-determination and tribal self-governance contracting and compacting programs, the tribes' share of the BIA's annual budget is determined in part by the overall number of FTEs and dollars allocated to various BIA programs; when BIA cuts personnel, those savings are to go to the tribes, not to the Department of the Interior.

Finally, whatever the merits of the cut in the Navajo-Hopi Rehabilitation Fund, note that it does great political harm to the President's most influential supporter in Indian Country, Navajo Nation President Peterson Zah. Quite frankly, it leaves most tribal leaders thinking that being a friend of the Clinton Administration doesn't amount to much.

As bad as the BIA budget cuts are, the cuts to the IHS budget are far worse. A simple statistic proves the point: fully one-half of the cuts in FTEs for the Department of Health and Human Services come from the IHS. It is simply an outrage that, out of all the agencies in that massive Department, the Indian Health Service should bear the lion's share of the cuts. When OMB Director Panetta met with the tribes recently, he let on that he had been misled by staff as to the actual effect of the IHS cuts. While it is welcome news that the OMB Director didn't cold-heartedly attack the Indian budget, the tribes are waiting for action from OMB and HHS to restore the IHS budget to the levels of previous years.

Again, the tribes are aware of the federal deficit and the hard choices that must be made. However, they have had this bitter experience before and have a right not to expect it from the Clinton Administration. In 1981, when Reagan assaulted the federal budget, the Indian budget took a twenty-five percent cut; Reagan devastated tribal budgets and neither the tribes, the BIA, nor the IHS have fully recovered. The news of the Clinton-proposed cuts was received in Indian Country with sense of outrage and foreboding. Moreover, they will not be sustained. The tribes are very capable lobbyists, and the reality is that most if not all of the cut funds will be restored. This scenario was played out year after year during the Reagan-Bush era, and it is being played out again this year. The result, ultimately, will be that the tribes will lose political respect for the White House and come to view it as an enemy.

b. Appointments

The Administration was very late to fill key posts such as Commissioner of the Administration for Native Americans and Chairman of the National Indian Gaming Commission. In fairness, the problems with the ANA and NIGC appointments were not entirely of the White House's making, and a new candidate has been named for the NIGC post. Nevertheless, the common perception in Indian country is that the White House has been slow to fill key Indian policy posts.

Similarly, Indian people had believed that Indians would be named to many positions in government not traditionally filled by Indians. While we have gotten the usual array of "Schedule C" and "Special Assistant" positions, the Administration's record in appointing Indians is no better than that of Reagan and Bush. The absence of any Indians in the White House, OMB, the Office of the Secretary of the Interior, the Office of the Secretary of Housing and Urban Development, and the appointed positions in the Department of Justice is a profound disappointment. We should emphasize that tribal leaders do not regard these appointments as "perks" deriving from their support of the President in the 1992 election. To the contrary, they are regarded as evidence of commitment to serious Indian policy development and, indeed, as necessities if the Administration is to have any genuine sensitivity to the needs and concerns of Indian Country. The White House has some explaining to do as to why Indians have not fared any better in personnel appointments.

c. National Policy Initiatives

Indians regard the achievements of the Administration as impressive on a national basis. The economic recovery is an important achievement, as are family leave, full funding for Head Start, the National Service initiative, etc. You must keep in mind, however, that in 1983, there was a "Reagan recovery;" it never reached the reservations, and Indian country was demonstrably worse off due to federal budget cuts in social welfare programs. Clinton policy initiatives such as health care, "Reinventing Government," welfare reform, and environmental equity all have the potential to do great harm to tribal interests if they are not carried out with an understanding of the institutions that serve tribal communities. While tribal leaders are pleased that Indian concerns seem to be the subject of study in each of these areas, they are very concerned that the White House's enthusiasm for these initiatives will lead to bad results on the ground in Indian Country. Tribal leaders got a scary look at this potential in the form of the proposed cuts in the Indian Health Service budget. Relying on factors that supposedly will arise from health care reform, HHS proposed a <u>$300,000,000</u> cut in the IHS budget! The White House must show its understanding of this phenomenon when taking credit for the current economic recovery and touting its other initiatives. Again, tribal leaders are experienced politicians, and they will want to know what the President has done for Indian country specifically, not just the country at large.

d. Trial Balloons

The White House has developed an unfortunate habit of floating ill-considered trial balloons on matters affecting Indians. Last year, the First Lady said in a visit to Montana that Indian Health Service clinics on the reservations might be opened to non-Indians as part of the national plan for providing rural health care services. That idea was never acted upon, but it sent a bit of chill through Indian country, where those clinics are regarded as the fulfillment of treaty and trust obligations to the tribes, not to the often-hostile non-Indians who surround them. Worse yet, within the last month, the welfare reform task force leaked word that it was considering recommending a four-percent tax on gaming profits; while state-run gaming would be exempt, tribal gaming operations would be subject to the tax. The very idea that the poorest communities in the country, which are required by law to spend their gaming profits on governmental services, should be taxed to pay for welfare reforms that will benefit primarily non-Indian inner-city residents shows an abysmal lack of understanding and insensitivity to Indian concerns. The President can expect tribal leaders to be profoundly offended by this idea.

3. The Importance of the Indian Vote

None of this would matter much if Indian tribes represented only another demanding interest group. However, the tribes and their leaders are important to the President's and the Party's prospects in 1996. The Indian community turned out in record numbers to support the Clinton-Gore ticket in 1992. The Clinton campaign itself deserves much of the credit; never before had a presidential campaign made a deliberate effort to organize Indian voters in its support. However, the bulk of the work was done by Native American volunteers in the tribal communities. Moreover, most of these volunteers were elected tribal leaders who used their influence over their communities to get them to vote.

The most visible organization was Native Americans for Clinton-Gore. The organization was chaired by Senator (then Congressman) Ben Nighthorse Campbell and Idaho Attorney General Larry EchoHawk. Navajo Nation President Peterson Zah chaired the Campaign Committee, and Cherokee Nation Principal Chief Wilma Mankiller chaired the Policy Committee. The Campaign Committee was responsible for voter registration and GOTV efforts in tribal communities, and the Policy Committee consulted with the campaign on Indian policy statements and prepare briefing materials for the campaign debates.

Native Americans for Clinton-Gore had active organizers in California, Oregon, Washington, Arizona, New Mexico, Colorado, Wyoming, Montana, North Dakota, South Dakota, Nebraska, Kansas, Oklahoma, and Minnesota. These volunteers organized voter registration drives on the reservations and in urban Indian communities and, when registration deadlines passed, they turned out the vote for Clinton-Gore. The results were most dramatic in Montana and New Mexico. In Montana, the organizers registered ten thousand new Indian voters on the state's seven Indian reservations. Of the eight rural Montana counties carried by the Democratic ticket, seven of them were the counties in which the reservations were located. Turnouts of registered voters on the reservations were over 85%. The Indian vote was widely credited in the Montana media with having delivered the state to the Clinton-Gore ticket and with being the margin of victory for Congressman Pat Williams over Republican Ron Marlenee.

In New Mexico, the volunteers registered approximately 8,000 new voters, raising Indian registration from 24,000 to 32,000. In the election, 79 of the state's 81 majority Indian precincts favored the Clinton-Gore ticket. Of the state's 30,000 Indian votes, 26,000 were for Clinton. The margin of 22,000 votes was almost one-half of Clinton's 45,000 vote margin in the New Mexico landslide.[2]

The volunteers were active fundraisers as well. In Washington, the coordinators estimate that tribal communities contributed over $100,000 to Democratic candidates. Similarly, in New Mexico, the tribes and their supporters donated over $100,000 to the campaigns of President Clinton, Senator Campbell, Congressman Bill Richardson, and the Democratic Party of New Mexico. The Indian community played important roles in several congressional campaigns as well. In addition to Senator Campbell, Congressman Williams, and Congressman Richardson, Congresswomen Elizabeth Furse and Karen English made specific efforts to attract money and votes from the Indian community.

Our disappointments from the 1992 campaign were in South Dakota and Arizona. Due in no small part to the historical neglect of the Indian vote by the democratic parties in those states, we were unable to generate major new blocs of Indian voters. This was particularly disappointing in light on the narrow margins by which Clinton lost in those states. We are redoubling our efforts in those states and believe that properly-organized Indian voters in those states can put them in the Democratic column in 1996.

The potential of the Indian vote has only been scratched. In New Mexico, for example, we believe there are still 30,000 Indians who are not registered. Since Indian voters favored Clinton with approximately 85% of their votes in New Mexico, the potential "head start" for Clinton in New Mexico is as much as 50,000 votes; if we register as many as half of these voters and turn them out, the Indian community could provide a margin of 35,000 votes in the 1996 election.

Similarly, in Arizona, Oklahoma, South Dakota, and Montana, races decided by five percentage points or less can be won by the Indian vote; in states with margins of three percent or less, the Indian vote can be decisive in Washington, Nevada, Minnesota, North Dakota, and Wyoming. Indeed, throughout the west, with the exception of mega-state California, the Indian vote can and often has provided the margin in statewide races. While the Clinton campaign successfully broke the Republican hold on the west, the best means of holding and expanding on those successes is to energize the Indian vote in those states.

We are quite unhappy to note that no arrangements have been made to treat specially those tribal leaders who worked hard for Native Americans for Clinton-Gore in 1992. Instead, the tribal leaders who were NACG volunteers are going to be treated like the rest of the herd.

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2 Clinton won by nine percentage points, after no Democrat had carried New Mexico since 1964.

Moreover, White House staff has shown inappropriate and undue deference to certain tribal leaders who are Republicans and who worked against the Clinton-Gore ticket in 1992. Now, no-one would suggest that any tribal leader be treated disrespectfully because he or she happened to support the other party; but surely all would agree that the White House should make efforts to make its political friends in Indian Country feel special. The White House cannot afford the perception that is growing in Indian Country that the early and strong supporters of the President enjoy no better relationship with the White House than do the President's political enemies. That is precisely the message being conveyed by the White House's conduct to date.

3. The Good News

Having recited Indian Country's disappointments, we still note that support for the President is strong, and the Administration has done many things right. The appointment of an Interior Secretary who has an understanding of his trustee responsibilities to Indian Country is a welcome relief. Administration appointees have been far more open and visible at Indian events than in any recent Administration. The Administration is not opposing legislative initiatives proposed by the tribes, for the most part. Assistant Secretary Deer is well-liked in Indian Country. The White House has become a friendly place for tribal leaders. Major policy initiatives do consider Indian concerns. Significantly, Native Americans for Clinton-Gore continues to grow, and we have found no difficulty in recruiting new coordinators throughout the country. In short, despite the disappointments, enthusiasm is still high, simply because the President seems to give a damn. There is broad confidence that, if we can get the President and his Administration to focus on Indian policy concerns in an informed way, this President will do right by the tribes. Thus, the need to establish a process for the Administration to become informed is paramount.

Withdrawal/Redaction Sheet
Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. memo	To Kathryn Way, Michael Schmidt, Rosalyn Miller from Carol Rasco re: Indians (1 page)	03/29/04	P5

COLLECTION:

Clinton Presidential Records
Domestic Policy Council
Carol Rasco (Meetings, Trips, Events)
OA/Box Number: 7262

FOLDER TITLE:

Tribal Leaders Mtg. 4-29-94 [2]

Rhonda Wilson

rw178

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 advise 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]

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

29-Mar-1994 10:27pm

TO: Kathryn J. Way
TO: Michael T. Schmidt
TO: Rosalyn A. Miller

FROM: Carol H. Rasco
Economic and Domestic Policy

SUBJECT: Indians

There have been all kinds of hallway meetings, phone calls, faxes, etc. on the issue of the Indian meeting with the Pres. during the past two days as you are all aware. The last thing I did yesterday was two fold...(a) Janet Reno called me to ask what they can do to help and after telling her how they did NOT help with that atrocious news release they put out I told her we were trying to strategize as to how to clean up the mess and someone would get back with her as I would be gone three days and (b) I reported all this to Marcia Hale...she and I agreed that Rosalyn would today call the Nat. Congress on American Indians to reply to the letter sent to me saying I could meet next week per their request and Marcia will join me in that meeting. We will meet with their small group about 15 minutes regarding the meeting with the Pres. and then bring in the event coordinator and communications person from White House to brief them in those areas. Marcia and I agreed there needs to be a meeting of White House personnel involved in this thing (shall we rent a stadium) on Monday if it can wait until then as I am swamped upon my return Friday and don't plan to be in the office over the weekend.

Given the events of today I wonder if there won't be pressure to have the meeting planned for Monday earlier. If that is the case please do it without me but make sure Kathi or Mike attends with Donsia and me both out. If Marcia feels it can wait until Fridday I have small window of time during the lunch hour when a group can meet in my office, Roz. I need for one of you to get with Marcia and determine if this meeting of White House folks needs to be now, Friday or Monday, set it up including whomever you all feel needs to be present.

Finally, I need for Kathi or Mike to call Nancy McFadden, tell her the AG and I talked on this topic yesterday, that we are still working on the issue in White House, no action to report as to action needed from Justice at this time...unless you all have a meeting and have something to report to Janet. Tell her I'll call her Friday or Monday. (Make sure I do that Roz.)

Withdrawal/Redaction Sheet
Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. note	ACORN Briefing Notes (6 pages)	07/25/94	P5
002. list	ACORN Meeting Attendees (partial) (1 page)	07/22/94	P6/b(6)
003. memo	To Ronald B. Andrew from Patricia E. Romani re: appt. request (partial) (1 page)	07/25/94	P6/b(6)
004. list	ACORN Meeting Attendees (partial) (1 page)	n.d.	P6/b(6)

COLLECTION:

Clinton Presidential Records
Domestic Policy Council
Carol Rasco (Meetings, Trips, Events)
OA/Box Number: 5041

FOLDER TITLE:

ACORN [Association of Community Organizations for Reform Now] (Z. Polett)
Roosevelt Rm. 25 July 1994 4:00-4:30 pm

Rhonda Wilson

rw183

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]
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Attachment #2

ACORN Briefing Notes
(with ACORN's Suggested Agenda Next Document)
July 25, 1994
Roosevelt Room
4:00-4:30 p.m.

I. Extend the Community Reinvestment ACT (CRA) to Non-Bank Financial Intermediaries

Recommended Response -- Not to commit to introducing legislation in January, but express the Administration's willingness to review any proposal ACORN may have on this matter beyond what they are presenting at the meeting. If pressed, he should indicate a belief that it is not appropriate to move forward on the issue of extending CRA to non-banks until the present reform effort of CRA has been completed by the four banking regulators (which, confidentially, may not occur until late fall).

The NEC, DPC, and the Treasury have done some very preliminary work on the issue of extending CRA to non-bank financial intermediaries. The main arguments for extending CRA include:

a. Banks and thrifts are no longer the leading sources of credit in this country -- banks and thrifts had only a 27% share of all c redit extensions;

b. In order to level the playing field, non-bank financial intermediaries should be subject to the same CRA requirements as banks and thrifts;

c. The viability of CRA requires an extension of its scope.

Despite these arguments, there are several issues concerning extending CRA:

a. What is the public policy rationale for extending CRA? The non-banks will argue that traditional banks and thrifts would be subject to CRA because those institutions provide a full range of traditional banking services that the public requires, receive an implicit Federal Government guarantee in the form of deposit insurance coverage, and serve specific, identifiable communities, mortgage banks, securities firms -- argue that they do not receive Federal deposit insurance coverage, and do not have identifiable communities which they serve, and therefore should not be subject to CRA. <u>However</u>, the rationale for establishing CRA included the recognition that access to credit and basic banking services for all Americans is an important public policy goal in and of itself. This rationale would seem to apply to the non-banks as well as to traditional banks and thrifts.

b. Legislation may not be the appropriate vehicle for extending CRA. Other approaches, such as the Treasury announcing that it would accept lending disclosure information from the non-banks on a voluntary basis, might be more effectie over the long-term.

c. Congress is very divided on extending CRA. The House Banking Committee migth be able to vote out legislation extending CRA, but the bill would also be referred to Energy and Commerce, where it would not likely be adopted. In addition, the Senate Banking Committee would also have difficulty passing CRA extension legislation.

d. Administration support for extending CRA would be perceived as over-regulationand anti-business (except by the banks and thrifts) at a time when our relations with the business community are mixed.

e. Who would regulate the non-banks? There is no one regulator of these institutions and in general regulation of them is relatively loose compared to that of the banks and thrifts.

II. <u>Strengthen Proposed CRA Regulations</u>

Because this is an ongoing rulemaking, the White House is not supposed to comment. ACORN shold submit any comments to Sally Katzen at OIRA.

We have met with ACORN on this issue on many occasions and have relayed their concerns to the four banking regulators through Gene Ludwig, the Administrations' lead on this issue. Reform of CRA is in its final stages, the comments received from community groups, the banking industry, and others.

Getting the final regulations adopted by the Federal Reserve will be very difficult. Assuming we can rely on Blinder's and Yellen's support, we still need two other votes for a majority. The most likely supporters are Governors Lindsey and Chairman Greenspan. ACORN has in the past suggested that we bypass the Fed, and institute tough CRA regulations through the OCC, OTS, and FDIC. We view that proposal as a non-starter. In light of the Fed's importance in the banking industry, it would reflect badly on the Administration. In addition, it would create a loophole in the law.

One issue of particular concern to ACORN is the proposal to allow that a bank with less than a satisfactory record on lending can get a "passing" CRA grade by virtue of its investment or service acitivities. We have talked with the OCC about this provision, and we believe it would be somewhat altered in the final rule to insure that the "lending test" is giving a greater weight.

ACORN wants to delete the reduced process requirements for banks that reeive consistently high ratings and the streamlined examinations for small banks and thrifts under $250 million in assets. However, these provisions are integral to the President's dual objective of strengthening CRA by making it more performanced-based while at the same time minimizing the compliance burden of financial institutions.

III. Support Strong Insurance Redlining Legislation

DPC staff has advised White House Legislative Affairs that the Administration has been asked by Energy and Commerce Chairman Dingell not to take a position on H.R. 1188. H.R. 1188 got tangled in a jurisdictional dispute between the House Banking Committee and the House Energy & Commerce Committee, with Energy & Commerce the victor. Feingold bill (S. 1917) is closer to the House Banking Committee bill (Rep. Kennedy's bill) which was not adopted. From a policy perspective, Paul Weinstein doesn't think we would oppose the Feingold bill if we had to make a judgement -- in fact, we are on record as supporting (as ACORN requests) the reporting data on a census tract rather than a zip code basis. **From a political perspective, we are withholding comment. My understanding is that neither the House nor the Senate bill will be signed into law this year.**

IV. Support Secretary Cisneros Initiatives

a. Public Housing Tenant Opportunity Program -- This program was supposed to be funded as a set-aside in the public housing modernization budget, which has been fully funded. The House appropriators set aside $85 million out of $3.6 billion in budget authority for public housing modernization for the Tenant Opportunity Program (TOP), same as the Administration's request. Senate appropriators also provide $3.6 billion, but the committee report says that "no funds are recommended for the TOP." TOP is an expansion of the previous Administration's resident management and other self-sufficiency efforts. This is an initiative important to Secretary Cisneros and we will work for its inclusion in the House-Senate Conference.

b. Community Viability -- The Administration proposed funding this program at approximately $150 million. It is an important initiative that would provide grants for urban design and metropolitan strategic planning. The Senate Appropriators have only provided $20 million for this initiative. HUD's position is to request additional funding so that they would have the discretion to fund both the grass roots and national intermediary organizations.

c. HUD Fair Housing Initiatives -- Considering the President's busy schedule this summer and early fall, it does not make sense for him to appear at one of the public hearings. These hearings will be politically charged, with the insurance companies employing a full court press.

V. Use the reauthorization of the Elementary and Secondary Education Act to provide funding for new parent-initiated public school in low income neighborhoods.

A summary of the charter school proposals submitted to Congress is attached (Attachment #3).

The ACORN schools would be eligible to apply for federal assistance, and the Secretary of Education would be authorized to fund them if they (1) take as their benchmark the challenging state performance standards being developed under Goals 2000 and the Elementary and Secondary Education Act and (2) make a strong case that the proposed curriculum and pedagogy of the new school will meet those standards.

ESEA is not yet a done deal. According to a report received by DPC staff, it should reach the Senate floor next Friday. While the bill faces a number of amendments, there is as yet no information that the charter school provisions will come under attach.

VI. Write regulations for the Crime bill that will promote funding of community-based anti-crime programs

Community groups were disappointed last year when the Administration's $150 million Police Hiring Supplement program did not include funds for community-based crime prevention programs -- only for salaries and expenses associated with hiring and rehiring police officers. ACORN's concerns about the current crime bill's program regulations are no doubt based on this experience.

For the record, when the President first proposed that Congress include $200 million for community policing in the mini-stimulus package, the Attorney General transmitted to Congress a proposal that called for $150 million for police hiring and $50 million for programs to support community policing in other ways -- such as through community-based crime prevention. Congressional appropriators, however, rejected the inclusion of non-hiring community policing monies, and ACORN and other community advocates do not want the same to happen with $9 billion community policing program pending in the crime bill.

The 100,000 cops program is much broader than last year's Police Hiring Supplement. For instance, the bill states that its number one purpose is to "substantially increase the number of law enforcement officers interacting directly with members of the community," and it further states that a fundamental purpose of the program is to "encourage the development and implementation of innovative programs to permit members of the community to assist State and local law enforcement agencies in the prevention of crime in the community." Based on this language, we can give ACORN some strong assurances about the role we intend community groups to play in implementing the community policing initiative. Here are the points you can emphasize in the meeting:

1. A commitment to fund community-based anti-crime programs. Whether or not the crime bill's regulations "set aside" funds specifically for community-based anti-crime programs, we fully intend to fund such initiatives through the 15% (or roughly $1.2 billion) of the policing program that can be used for 10 broadly defined non-hiring purposes. The crime bill's regulations will make abundantly clear that grants will be awarded for community groups to work in concert with their local police departments to reduce and prevent crime.

2. A commitment to use the President's policing program to strengthen ties between local police and neighborhood residents. Even for those community groups that do not receive -- or even apply for -- grants, the President's policing plan has the potential to make local police departments more responsive to the needs of residents in hard-hit, high-crime neighborhoods. To apply for a community policing grant, police departments have to submit a community policing plan "that reflects consultation with community groups." Thus, as the nation's police departments begin to draft community policing strategies, community groups will have an opportunity to raise their concerns with local police. We must challenge community groups to use this opportunity to forge new partnerships with their police. (Some community advocates have argued that the language in the crime bill is not sufficiently strong to ensure responsiveness to the community, but we can always try and strengthen the community consultation requirement by regulation.)

3. **A commitment to work with community advocates in implementing the entire crime bill.** One of the things that makes the current crime bill different from previous anti-crime efforts is that it has much more of a community focus. Whereas previous bills have focused on increasing federal resources (FBI and DEA agents, federal prison construction, etc.) and federalizing state and local crimes, the overwhelming majority of the resources in this 6-year, $30 billion crime bill go directly to communities for crime fighting programs. This bill puts an end to the "trickle down" crime policies of the past and guarantees that crime fighting monies will go to where they are needed most -- at the community level. For example, the $1.1 billion Ounce of Prevention Council will not only fund community-based crime prevention programs, it can be used to coordinate the many crime prevention programs authorized in the crime bill, to provide communities with technical assistance and to waive certain program regulations in an effort to make the crime bill's programs more community friendly. With so many of the crime bill's programs potentially impacting communities, it is crucial that we work with community groups on all aspects of the crime bill and before regulations are promulgated.

VII. <u>Support an increase in, and indexing of, the minimum wage.</u>

The President has always been sympathetic to indexing the minimum wage. At this time, however, we are focused on passage of our health care plan which will help increase the wages of millions of Americans.

Improving the standard of living of Americans is something this Administration strives to do.

Withdrawal/Redaction Sheet
Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. memo	For Carol Rasco from Robert S. Litt and Dawn Johnsen re: Florida Health Security/Anti-Kickback Statute (3 pages)	08/05/94	P5
002. memo	To LeeAnn Inadomi and Tod Stern from Carol Rasco re: Letter to Graham and Gibbons (1 page)	08/08/94	P5
003. memo	For Leon Panetta from Carol Rasco re: Request from Governor Chiles (2 pages)	08/04/94	P5
004. note	Handwritten Note re: Florida (1 page)	08/01/94	P5
005. memo	For Leon Panetta from Carol Rasco re: Request from Governor Chiles (copy of #3) (2 pages)	08/04/94	P5
006. memo	For the President from Carol Rasco re: Florida Waiver w/attachment (4 pages)	07/21/94	P5
007. memo	For the President from Carol Rasco re: Florida Waiver w/attachments (6 pages)	07/21/94	P5
008. memo	For the President from Christine Varney re: Summary of Weekly Cabinet Reports July 15, 1994 through July 22, 1994 (8 pages)	07/15/94	P5
009. memo	For the President from Carol Rasco re: Waivers (1 page)	07/24/94	P5
010. memo	To Kevin Thurm from Michael Wald, Deputy General Counsel re: Beno v. Shalala (2 pages)	07/22/94	P5
011. memo	To Katherine L. Darwin from Carol Rasco re: Florida Waiver (1 page)	07/21/94	P5

COLLECTION:

Clinton Presidential Records
Domestic Policy Council
Carol Rasco (Meetings Trips Events)
OA/Box Number: 5041

FOLDER TITLE:

Florida Waiver Briefing 5 August 1994 10:00-10:30

rw196

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
012. memo	For the President from Carol Rasco re: Floriday Waiver w/attachment (copy of #6) (4 pages)	07/21/94	P5
013. memo	To Carol Rasco from Kathryn Way re: Florida Waiver (1 page)	08/04/94	P5
014. memo	For Leon Panetta from Carol Rasco re: Call to Governor Chiles (1 page)	08/16/94	P5
015. note	Note re: phone call (1 page)	n.d.	P5
016. report	Draft of Safe Harbor Regulation for Insurance Agents (1 page)	08/11/94	P5
017. memo	To Carol Rasco from Kevin Thurm re: Florida Waiver - Safe Harbor Regulation (2 copies) (10 pages)	08/12/94	P5
018. memo	To Carol Rasco and John Angell from Kevin Thurm re: Florida Waiver (2 pages)	08/23/94	P5
019. fax	To Carol Rasco from John Angell re: language (3 pages)	08/18/94	P5

COLLECTION:

Clinton Presidential Records
Domestic Policy Council
Carol Rasco (Meetings Trips Events)
OA/Box Number: 5041

FOLDER TITLE:

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

08-Aug-1994 12:03pm

TO: LeeAnn Inadomi
TO: Todd Stern

FROM: Carol H. Rasco
Economic and Domestic Policy

CC: Rosalyn A. Miller

SUBJECT: Letter to Graham and Gibbons

I have just received the draft letter you wanted me to review to Bob Graham. While the letter is fine it perhaps needs a slightly different twist. The review of the proposal is completed and for the past three or more weeks it has strictly been a matter of getting Florida to understand there is a KEY element that is illegal and must be adjusted. Chiles has met with the President on it, numerous people have met from Florida with HHS, HCFA and Justice officials; so far Florida is NOT willing to budget on the changes suggested to make the proposal pass the legal tests. There are political reasons Florida is not willing to make these changes but the bottom line is that they must. If the letter is to go today I would suggest consideration of the first sentence second paragraph reading:

The Dept. of Health and Human Services, the Health Care Financing Administration as well as the Justice Department are currently in discussions with Florida regarding the final issues to be resolved. All are comitted to a timely (or expeditious) resolution.

Tomorrow Leon and I are to meet with Governor Chiles and Lt. Gov. McKay. I would appreciate having a finalized copy faxed to me before 11:45 a.m. tomrorow if a response is sent by then.

Again, I am fine with the letter as drafted if you want to go with something that standard...however, the review is finished.

Let em know if further questions.

Thanks.

8/1

Debby Kilmer THE WHITE HOUSE
WASHINGTON

Florida

Walter Dellinger - very impressive!
1st hour very good
Justice now understands Florida's policy

Justice still feels illegal

End: Safe harbors > Legally HHS writes, Justice simply approves

HHS will be discussing ~~writing~~ into terms & conditions a safe harbor for perhaps only a yr.?
Florida has requested a meeting w/only Justice to discuss legal arguments

COPY

JUL 25 REC'D

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

21-Jul-1994 02:24pm

TO: (See Below)

FROM: Carol H. Rasco
Economic and Domestic Policy

SUBJECT: Florida waiver

(Missy: Please print out for Sylvia to give Leon)
(Rosalyn: Please print out for Nancy Hernreich and have delivered immediately in case Chiles should start trying to reach the President at which point I should be called prior to any return of the call in order to brief the President and/or Joel should be called for the briefing.)
(John and Keith: I have shared this information with Marcia verbally.)

Message for Leon, Harold, and others listed:

Joel K. has informed me that after working with Justice attorneys it is clear the only legal way to include the insurance salesmen's role in the Florida waiver is the establishment of a fixed commission which is differnt from the method Florida wished to use. Attorney General Reno is calling the Governor's office this afternoon to tell them this is the way it can be done. I am sharing this information with each of you in case you get calls from Florida.

I have with Joel's blessing alerted Governor Chiles' DC staff who are aware this has all been reviewed by White House General Counsel.

If Florida accepts this method it is my understanding from both HCFA and Florida officials that the final issues can be resolved very quickly.

CHRasco

Distribution:

TO: Katherine L. Darwin

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

04-Aug-1994 08:52am

TO: Carol H. Rasco

FROM: Kathryn J. Way
Domestic Policy Council

SUBJECT: RE: Florida waivvver

The information included on the waiver memo sent over last evening has the latest information. In case you have not seen that:::

There are two outstanding issues: Budget neutrality and insurance agent commissions for health plans.

Budget Neutrality will be the last negotiated issue. It is close to resolution but will not be finalized until ALL remaining issues are settled.

Commission for insurance agents: This is the ongoing legal problem. Justice(Walter Delinger) met with HHS council(Harriett???) and Florida officials to discuss ways this issue could be solved. As proposed, Justice has provided an opinion that the commissions could be viewed as bribes under certain statutes. Justice asked Florida to come back with a proposal that established a "range" for commissions(this is similar to the discussions Bruce Lindsay had with Buddy in Florida). Chiles is reluctant to do that and is in the process of providing another alternative. Prevailing wisdom believes the President of the state senate(himself an insurance agent) may have been given some assurances that prevent Chiles from going to a range. Florida officials(Doug Cook) believe HHS will find Chiles latest proposal unacceptable. Because the box Chiles is in seems to be getting smaller there is some concern that he will again go directly to the President to get his problem solved.

Let me know if you need more info

THE WHITE HOUSE

WASHINGTON

MEMORANDUM FOR LEON PANETTA

FROM: Carol H. Rasco

SUBJ: Call to Governor Chiles

DATE: August 16, 1994

++

Governor Chiles is touring flooded areas this morning and in the early afternoon. His office will call me when he lands in Tallahassee and give us a number where you can reach him. My office will get that information to you immediately.

++

Attached are two documents:

1. A one page proposal Florida submitted as suggested language for a safe harbor to be created.

2. Four pages prepared by HHS/HCFA and approved by the Justice Department's Criminal Division. These four pages have not yet been shared with Florida. The purpose of your call is to discuss the material with Governor Chiles and then send it to him directly. Or you may choose to fax the material to him immediately before the call. Please see the NOTE at the bottom of page two of the HHS/HCFA document regarding the incorporation of the Florida language into the safe harbor and the terms and conditions.

Explanation: The Safe Harbor provision which must go through a federal rulemaking process is written such that it can be used by anyone seeking this type waiver. The one page of "ADDITIONAL TERMS AND CONDITIONS" would be specific to the Florida waiver approval document. Terms and conditions documents are routine procedure in granting waivers and this part would be an item in that overall document.

IT SHOULD BE NOTED THIS IS A FINAL PROPOSAL BY HHS WITH ONLY MINOR CHANGES FORESEEN AS NEGOTIABLE.

PHONE CALL

+ The Departments of HHS and Justice took the proposed Florida language and incorporated it into a SAFE HARBOR draft rule with some provisions written for the specific Florida waiver terms and conditions document. The HHS proposal has been approved by all divisions necessary within HHS and Justice.

+ The one area where there had to be more clarity is in listing the conditions under which there can be a variable rate. As currently written these variations can be based on:

a. Geography (ex.: urban and rural areas may differ)

b. Numbers of persons on a particular policy

c. Other differentials in bona fide services by agents
  - specified in advance by state
  - maximum variation is 25% over the fixed amount

FLORIDA PROPOSED THIS LANGUAGE! REC'D

DRAFT No. 2
August 11, 1994

AUG 1 1 REC'D

SAFE HARBOR REGULATION FOR INSURANCE AGENTS

42 CFR § 1001.952

(o) *Insurance agents.* As used in section 1128B of the Act, "remuneration" does not include any payment made to an insurance agent by an insurance company or health maintenance organization as compensation for the services of the insurance agent marketing and enrolling any individual in an insurance plan for which the premium is paid in whole or in part by a State health program, as long as all of the following standards are met --

(1) The insurance agent is licensed by the state(s) in which he is doing business.

(2) The insurance company and the insurance agent enter into an agreement which is set out in writing, signed by the parties and specifies the services to be provided by the insurance agent.

In terms & conditions

(3) The compensation paid to the insurance agent, whether variable or fixed, does not

(a) increase unnecessary utilization of health care goods or services;

(b) increase the cost of health care goods or services;

(c) interfere with the choice of an individual in selecting a health care good or service or a health insurance plan for which payment may be made in whole or in part under a State health care program.

(4) The insurance agent is enrolling individuals as part of a Section 1115 demonstration project approved by the Health Care Financing Administration and the demonstration project requires:

In terms & conditions

(a) Consistent monitoring of sales and enrollment practices by the appropriate state agency.

(b) Each health plan to offer a standardized benefit plan which guarantees minimum benefits regardless of the health plan selected.

COPY

DEPARTMENT OF HEALTH & HUMAN SERVICES

Chief of Staff

Washington D.C. 20201

FACSIMILE

AUG 12 REC'D

DATE AUG 12 1994

TO: (NAME, ORGANIZATION, CITY/STATE AND PHONE NUMBER):

Carol Rasco
Assistant to the President
for Domestic Policy

456-2216

FROM: (NAME, ORGANIZATION, CITY/STATE AND PHONE NUMBER):

Kevin Thurm
Chief of Staff

690-6133

RECIPIENT'S FAX NUMBER: ( ) 456-2878

NUMBER OF PAGES TO SEND (INCLUDING COVER SHEET): 5

COMMENTS:

COPY

DEPARTMENT OF HEALTH & HUMAN SERVICES

Chief of Staff

Washington, D.C. 20201

NOTE TO CAROL RASCO

Attached is the draft material concerning the Florida waiver.

Kevin Thurm

MEMORANDUM

Attached hereto is the draft of
- o a safe harbor regulation; and
- o a term and condition to apply should the waiver be granted.

To the extent possible, this draft incorporates language submitted by the Florida authorities on August 11, 1994. Additional material has been added by the Inspector General and HCFA.

The Criminal Division of the Department of Justice has seen and approved the draft in its current iteration.

August 12, 1994

August 12, 1994

SAFE HARBOR REGULATION FOR

"HEALTH INSURANCE ENROLLMENT SERVICES"

Specifications for a new safe harbor under the Anti-Kickback Statute, 42 U.S.C. §1320a-7b(b) to be published in the Federal Register as a Notice of Proposed Rulemaking:

42 CFR §1001.952

(r) Health insurance enrollment services. As used in section 1128B of the Act, "remuneration" does not include any payment made to an insurance agent by a health insurance plan (including a health maintenance organization) as compensation for the services of the insurance agent marketing and enrolling any individual(s) in a health insurance plan for which the premium is paid in whole or in part by a State health care program, as long as all of the following standards are met --

1. Licensed agents only. The insurance agent is licensed by the state(s) in which he or she is doing business.

2. Written agreement. The health insurance plan and the insurance agent enter into an agreement which is set out in writing, signed by the parties and specifies the services to be provided by the insurance agent.

3. Payments are fixed dollar amounts with limited variability. The payments consist of a fixed dollar amount (not percentage commission), such as $ _____. This fixed dollar amount, and all other amounts referred to in this subparagraph, are set in advance by the state, and are consistent with the fair market value of bona fide services provided by agents. This fixed dollar amount can vary only in accordance with the following three criteria:

a. Geography. The fixed dollar amount can vary by geographic region, for example, different amounts for rural and urban regions. However, under this criterion, the fixed dollar amount cannot vary (except as otherwise provided in this subparagraph) with respect to health insurance plans written for persons who reside within a particular geographic region.

b. Number of persons on a particular policy. The fixed dollar amount can vary according to whether an individual, family, or group of persons is covered by a particular health insurance plan, as long as increased amounts are justified by increased bona fide services by agents.

c. Other differentials in bona fide services by agents. The fixed dollar amounts can be increased to the extent justified by differentials in bona fide services by agents in enrolling persons in one health insurance plan instead of another. Under this criterion, two aspects of any differential in fixed dollar amounts are specified in advance by the state. First, the reason for the differential is specified. [For example, the State of Florida has suggested that more bona fide work is required by agents in the sale of policies from companies which are not well-known to the public.] Second, the different fixed dollar amounts are specified, and the differential justified by an actual assessment of the quantity of additional bona fide services required of the agent. In addition, under this criterion, the maximum variation is 25% over the fixed dollar amounts determined under the preceding provisions of this subparagraph.

4. Demonstration projects only. The payments compensate agents for enrollments in an insurance plan which is participating in a demonstration project which has received approval from the Health Care Financing Administration under Section 1115 of the Social Security Act.

NOTE: The attached "Additional Term and Condition" would be incorporated into the terms and conditions to be attached to the waiver approval letter. Please note that the above draft of a proposed safe harbor incorporates paragraphs (1) and (2) of the State of Florida's "Draft No. 2" of August 11, 1994. Paragraphs (3) and (4) of Florida's "Draft No. 2" are incorporated in the attached "Additional Term and Condition."

ADDITIONAL TERM AND CONDITION

__. Any compensation paid to insurance agents for their services in the marketing of insurance policies and enrollment of beneficiaries under the Florida Health Security Program shall meet the terms of the attached letter from the U.S. Department of Justice declining to prosecute under the anti-kickback statute (42 U.S.C. 1128B(b)) with respect to practices set forth in that letter. In addition, the payment of any such compensation must fall within the terms of any safe harbor regulation addressing this subject promulgated by the Secretary of Health and Human Services under that statute. The State shall ensure that any compensation paid to such agents does not--

(a) encourage or promote unnecessary utilization of health care goods or services,

(b) increase the cost of health care goods or services, or

(c) interfere with the choice of an individual in selecting a health care good or service or a health insurance plan for which payment may be made in whole or in part under a State health care program.

The State shall also provide for--

(a) consistent monitoring of sales and enrollment practices by a peer review organization, and

(b) each health plan to offer a standardized benefit plan which guarantees minimum benefits regardless of the health plan selected.

MEMORANDUM to Carol Rasco
from Kevin Thurm

Attached hereto is the draft of

- o a safe harbor regulation; and
- o a term and condition to apply should the waiver be granted.

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b. Number of persons on a particular policy. The fixed dollar amount can vary according to whether an individual, family, or group of persons is covered by a particular health insurance plan, as long as increased amounts are justified by increased bona fide services by agents.

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(b) each health plan to offer a standardized benefit plan which guarantees minimum benefits regardless of the health plan selected.

DEPARTMENT OF HEALTH & HUMAN SERVICES

Chief of Staff

Washington, D.C. 20201

AUG 23 1994

MEMORANDUM

TO: CAROL RASCO
JOHN ANGELL

FROM: KEVIN THURM

SUBJECT: Florida Waiver

Attached please find redrafted language for inclusion in the Florida Waiver which has been cleared through this Department and the Department of Justice.

We would like to send this to the state as soon as possible, so please contact me if you have any questions or comments.

Irrespective of any provisions of State law, in view of section 1128B(b) of the Social Security Act, the State will insure that independent insurance agents shall not receive remuneration, directly or indirectly, for providing services related to the program established pursuant to this demonstration project. Should the State choose to make possible participation in this demonstration project by independent insurance agents, the terms and conditions of that participation must be pre-approved by the Department of Health and Human Services and the Department of Justice.

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

FAX COVER SHEET

NUMBER OF PAGES ____________ **DATE** ____________
(excluding cover sheet)

TO: Carol Rasco

Office:

Office Phone Number:

Fax Number: 62878

FROM: John Angell

Agency: OMB

Office Phone Number: 395-4790

Office Fax Number: 395-3729

Additional Information:

COPY

23.c. Any arrangements providing for the use of independent agents in the marketing of or dissemination of information relating to FHS-related coverage must be approved by the U.S. Department of Justice, in light of the provisions of Section 1128 (b)(b)(1) of the Social Security Act. In absence of such approval, Florida may not provide for the participation of such agents in the marketing of, or dissemination of information relating to such coverage.

23.c. Any arrangements providing for the use of independent agents in the marketing of our dissemination of information relating to FHS-related coverage must be approved by the U.S. Department of Justice, in light of the provisions of Section 1128 (b)(b)(1) of the Social Security Act. In absence of such approval, Florida may not provide for the participation of such agents in the marketing of, or dissemination of information relating to such coverage.

Was fax to Kevin, Alicia, & Kathi

8/19/94

Kathi to call

COPY

WITHDRAWAL SHEET
Clinton Library

Collection: **Domestic Policy Council** - Rasco, Carol

Archivist: rfw

OA/Box: OA 8251

File Folder: **Exceptional Parent [1]**

Date: 3/26/04

DOCUMENT NO. & TYPE	SUBJECT/TITLE	DATE	RESTRICTION
1. Memo	To Stanley Herr from Marvin Krislov, 1p	4/16/94	P5

RESTRICTIONS

P1 National security classified information [(a)(1) of the PRA].
P2 Relating to 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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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.

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B7 Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA].
B8 Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA].
B9 Release would disclose geological or geophysical information

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

16-May-1994 04:25pm

TO: Stanley S. Herr

FROM: Marvin Krislov
Office of the Counsel

SUBJECT: RE: your question

yes. since she can't really claim copyright for works created as a govt employee, she can't make such a statement. she is welcome to try to negotiate a side deal with publisher. mk

COPY

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Collection: **Domestic Policy Council** - Rasco, Carol

Archivist: **rfw**

OA/Box: OA 8251
File Folder: **Exceptional Parent [2]**

Date: 3/26/04

DOCUMENT NO. & TYPE	SUBJECT/TITLE	DATE	RESTRICTION
1. Memo	To Stanley Herr from Marvin Krislov, 1p	4/16/94	P5

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

16-May-1994 01:37pm

EP

TO: Stanley S. Herr

FROM: Marvin Krislov
Office of the Counsel

SUBJECT: <u>your question</u>

if the book was written in her official capacity, then no copyright is available. if it was written in her personal capacity, then she may claim copyright.

COPY

WITHDRAWAL SHEET
Clinton Library

Collection: **Domestic Policy Council** - Rasco, Carol

Archivist: rfw

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File Folder: **Chinese Immigrant Smuggling**

Date: 3/27/04

DOCUMENT NO. & TYPE	SUBJECT/TITLE	DATE	RESTRICTION
1. Memo	For V.P, Chief of Staff, et al., from Abner Mikva Re: Chinese Immigration Litigation, 1p	12/7/94	P5
2. Memo	For V.P., DPC, NSC, Office of Comm. From Bernard Nussbaum, Clifford Sloan, Marvin Krislov re: Chinese Immigration Legislation, 4p	12/20/93	P5
3. Memo	For POTUS from V.P. re: Chinese Smuggling, 3p	nd	P5
4.Memo	For Carol Rasco from Donsia Strong re: Chinese Migrant Smuggling, 3p	5/17/93	P5

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B9 Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA].

THE WHITE HOUSE

WASHINGTON

May 17, 1993

MEMORANDUM FOR CAROL RASCO

FROM: DONSIA STRONG

SUBJECT: Chinese Migrant Smuggling

file

ISSUE

During the last several months, the NSC, INS and other departments and agencies have become aware of attempts to smuggle Chinese aliens into the United States aboard merchant and fishing ships by way of transpacific voyages to the Western Hemisphere.

Most often the ships are modified to accommodate human "cargo" in Hong Kong or other parts of East/Southeast Asia, travels to Chinese coastal areas where its passengers are ferried out to in smaller boats and begins the trip east. In some cases, the ship sails directly to the United States; in others, to a nearby country like Mexico (or, it is presumed, to other points south) from which arrangements are made for the migrants to enter the United States by land.

According to the INS, these operations are conducted by Chinese criminal gangs. The passengers make downpayments of up to several thousand dollars or more. It is understood that the remaining $20,000 or $30,000 will be be paid off through indentured servitude as restaurant and dry cleaning workers and as prostitutes or drug operations employees after arrival in the United States.

The ships generally fly what are termed "flags of convenience" meaning the ships are registered in countries with lax registration requirements and enforcement.

There are a number of theories about why this is occurring now. First, it is believed that as the Chinese economy grows even the poorest can find enough money to make the trip to a better life. Second, driftnet fishing in the region is prohibited resulting in a surplus of fishing vessels which can easily be modified to fit the smuggler's needs. Finally, some believe a Bush Administration asylum regulation that gives sympathetic consideration to claims of persecution based on China's one-child policy.

MAGNITUDE OF THE PROBLEM

Thus far, Administration agencies have dealt with five boatloads of Chinese over the past three months:

The Eastwood: Towed to the Marshall Islands; 500 migrants aboard: repatriated, after a review by UNHCR, at a cost to the Department of State of $1.2 million

The Mermaid: Interdicted off of coast of Florida: 200 migrants taken to Honduras; UNHCR conducting review for asylees; costs to State about $500,000

Chinese in Mexico--2 boatloads: Discovered in a safe house in Mexico; 300 migrants were held in Mexican custody; repatriated on Friday at a cost of $290,000 paid out of a U.S. provided fund for repatriation of third country nationals.

Ching Luang Hsiang: As of late afternoon Friday entered U.S. territorial waters near San Diego, where INS was prepared to detain the passengers.

In addition to these ship, INS and Coast Guard report one suspected smuggling ship off the Pacific coast of Mexico and another in the South Pacific heading our way.

ACTION

So far, the focus has been on interdiction which involves diverting the ships to flag states or to nearby land (not the U.S.). In those countries the UNHCR can assess this group of migrants for refugees deserving protection, while depriving them the opportunity to take advantage of our asylum process.

However, money has become an issue even though interdiction will costs considerably less than if they enter the U.S. In addition, if they enter the U.S. the issue becomes solely a domestic one. The USG will have to pay for temporary housing and repatriation transportation for those not granted asylum (thus far the vast majority). We have been drawing on State refugee money ($1.4 million so far). Given other requirements for State refugee funds, we would like to seek other sources of money.

INS has an Emergency Immigration Fund of about $30 million which has never been drawn upon which DOJ OLC says can be used for this purpose. It will require a Presidential Determination to draw upon. (there are political consideration we should discuss further.) We will also need to consult the Hill. DOJ, including the AG, is prepared to proceed to request the President to notify Congress. They want to know whether to proceed.

NSC staff transmitted a memo like this to Tony Lake today and received his approval and support contingent on your support and approval. If you provide your support, I anticipate the request for Presidential Determination will go forward in two stages. The AG will request; the President will approve Hill consultations; and, if there are no problems, he would sign the Determinations

The Determinations would be part of an overall strategy which I will discuss with you further.