

MEMORANDUM FOR: DCI ---

This paper just arrived.
Dewey is taking it for action,
with Al's help, to provide you
Comments tomorrow morning.

Keith

~~Lu -
This package is Dewey/Al
missing comments on this paper.
Pls check with Joe. Give Bill check~~

Date 25 Feb 62

NATIONAL SECURITY COUNCIL
WASHINGTON, D.C. 20505

February 25, 1982

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MEMORANDUM FOR:

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Ms. Nancy Bearg Dyke
Assistant to the Vice President
for National Security Affairs

Executive Secretary
Central Intelligence Agency

Mr. L. Paul Bremer III
Executive Secretary
Department of State

Ms. Jacqueline Tillman
Executive Assistant to the United States
Representative to the United Nations

Lt Col Robert P. Meehan
Assistant for Interagency Affairs
Office of the Secretary of Defense

Col Charles F. Stebbins
Executive Assistant to the
Chairman, Joint Chiefs of Staff

Mr. F. Henry Habicht
Special Assistant to the
Attorney General

SUBJECT: NSPG Meeting on Cuban Excludables (C)

Attached is a background options paper for tomorrow's NSPG Meeting on Cuban Excludables, to be held after the NSC meeting which will take place at 1:00 p.m. in the Cabinet Room. (C)

Michael O. Wheeler
Michael O. Wheeler
Staff Secretary

Attachment
Background Options Paper

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Review on February 25, 1983

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DISCUSSION PAPER

CUBAN EXCLUDABLES

Overview

In accordance with the President's decision of June 4, 1981, ways to return about 3,000 undesirable Cuban excludables have been examined by an Inter-agency Group.

There is no attractive solution to the problem of undesirable persons, especially criminals, who arrived from Cuba illegally during the 1980 Mariel boatlift. The alternatives are to send them to a third location or to return them to Cuba by suasion or force.

No third country is likely to accept them even temporarily.

Return by force directly to Cuba would leave us vulnerable politically. Cuba would probably resist, thus jeopardizing lives and risking armed conflict. A "preventive" use of armed force to establish a secure area in Cuban waters and territory would also violate the U.N. Charter. This is not the right scenario for armed conflict with Cuba.

Return through Guantanamo would also entail high risk and could cost us the base.

Sending undesirable excludables for detention to Guantanamo would also risk Cuban retaliation and violate the terms of the base agreement.

Earlier efforts to convince Castro to take undesirables back failed. We can try again but this will require a substantive approach contrary to our present policy. Very strong representations, for which a scenario has been developed, are the most attractive alternative. We would hold out no prospect of negotiations, although Cuba wants a broad migration agreement. Castro wants to regularize immigration to relieve internal pressures. We only want to return the undesirables and to avoid another mass illegal migration. And we do not believe we should let immigration issues drive our overall Cuba policy--just now entering a critical phase--rather than the other way around.

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Background

The return of Cubans who entered the U.S. illegally from Mariel and who are excludable under U.S. law has a very high priority among the migration problems facing the U.S. The attached fact sheet tallies the excludables and shows their status.

The Cuban government has refused repeated U.S. requests delivered both directly and through third parties to take them back. In December 1980 and January 1981 both governments held talks on migration which included the issue of returning excludables to Cuba. The talks ended without agreement. The sticking point was Cuba's refusal to accept the unconditional return of any Cuban found excludable under U.S. law, insisting instead on a case-by-case veto.

The courts are challenging our ability to continue to detain many of the 3,000 or so we seek to return, for 792 of whom final orders of exclusion have been issued. Some of those under exclusion orders have already been released, either by INS or the Federal Court. Proceedings to bar the exclusion and obtain the release of some have been initiated by attorneys seeking to protect their civil liberties. We also face domestic protest over the violent crimes committed by some of the Mariel Cubans, many of whom we had not otherwise considered for return to Cuba.

In January, 1981, the Justice Department estimated that there were approximately 5,000 Cubans whom we wanted to exclude. In the last round, there was considerable doubt in the USG that the U.S. could successfully exclude anything close to that number. The Justice Department now has identified about 3,000 Cubans for exclusion.

Categories

The categories of Cuban entrants we seek to exclude in descending order of priority, are:

- Persons in Federal prison facilities (Atlanta), who admitted committing crimes in Cuba, excluding political and minor crimes.
- Persons requiring substantial institutional care.
- Persons who are in prison in pre-trial status or who have been convicted of a Federal crime subsequent to arrival.

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-- Persons whose parole has been revoked by INS because of broken sponsorships.

-- Trashers of holding camps, mostly located in INS detention facilities.

-- Juveniles who are in state or Federal institutions.

-- Persons who want to return. (They are difficult to resettle in the U.S., and therefore present problems. Members of this group hijacked ten airplanes to Cuba during the summer of 1980.)

ACTION OPTIONS

Option--Resettling the Mariel Undesirables in a Third Country Pending Cuban Repatriation

One proposal has been the temporary resettlement of these undesirables in a third country pending Cuba's agreement to take them back. This proposal has no prospect of success.

PRO

-- Getting the undesirable Cubans out of the U.S. would be viewed as an Administration victory.

-- If Cuba eventually takes them back would be viewed as an Administration victory over Castro.

CON

-- We may not have legal authority to exclude these Cubans to a third country and many will refuse to leave the U.S. voluntarily.

-- There is no reason to believe Castro will repatriate these undesirable Cubans from a third country if he will not take them from us directly. Indeed, there is less.

-- There is no prospect of a third country taking these undesirables for temporary resettlement unless we pay all the costs and also make it worthwhile financially. We have spent well over \$700 million thus far on domestic aspects of this problem.

-- Other countries are not interested in helping the U.S. resettle Cubans who are considered trouble-makers and

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a U.S. problem. In 1980 the U.S. mounted a worldwide campaign to resettle approximately 70,000 sponsorless Cuban entrants. We resettled 69 (0.1%), and they were desirable migrants.

Option--Return by Force

A series of military options were prepared in July, 1980. These options are still current. Using armed force against Cuba to return these excludables would violate the U.N. Charter and international law because it would not be a legitimate use of force proportional to the Cuban provocation. If in the process of using force, some of the excludables were hurt or killed we could expect international criticism for jeopardizing the lives of innocent people. It should be noted also that the intelligence community's judgment is that Cuba would use military force to oppose any forced repatriation. Such Cuban opposition could escalate into wider hostilities with the U.S.

Suboption--Return via Guantanamo

The U.S. Naval Base Guantanamo has strategic importance to the United States. It controls the Windward Passage, primary route of shipping between Panama Canal, South America and U.S. East Coast and is within two days steaming time of any spot on periphery of Caribbean. It offers a beachhead and support for surveillance and possible contingency operations in the Caribbean with an air base complex ideally located for staging and refueling aircraft enroute to other Caribbean areas. It is also an important component of fleet training for Atlantic Fleet.

A U.S. presence denies the use to forces potentially hostile to U.S. of this natural deepwater port and ship haven and offsets Soviet activities/influence in region.

The Department of Defense has examined ways to use Guantanamo as a conduit for return of Cuban excludables to Cuban control. These are:

I. Air movement from a secure military base in the southeastern United States to the Leeward Point Field, Guantanamo.

PRO

— Would give CONUS-based Cuban intelligence network little time to detect movement or determine destination.

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CON

-- Would require over 20 C-141 aircraft sorties and approximately 3 1/2 hours for the landing phase, removing any possibility of surprise and generating increased Cuban military presence around Guantanamo in a matter of hours after first plane landing, especially Cuban Air Force activity.

-- Would present sizeable problem of ferrying personnel from Leeward Point to Windward Point of base for follow-on movement to Cuban territory. (There is no feasible option for moving excludables to Cuban territory from Leeward side of base.)

II. Clandestine movement by sea from east coast military port to Guantanamo.

PRO

-- Even if detected, Cuban intelligence might have difficulty determining U.S. intentions. This would also ease follow-on movement to Cuban territory after arrival at Guantanamo.

CON

-- Movement by sea from east coast (2-3 days) would probably be detected and tracked by Cuban intelligence.

-- Individual Cubans would be less manageable since they would conclude they were being forcibly returned to Cuba. After arrival they would require a six mile ride to Northeast gate for return to Cuban territory.

Defense sees the following disadvantages associated with the use of Guantanamo for movement of Cuban excludables into Cuba:

-- It would link Guantanamo with the migration issue, although the base has not previously been used by Cuba as a conduit to the United States. In retaliation, Cuba might flood Guantanamo with as many as 150,000 migrants, or might attempt some future retaliatory and/or harassing action at Guantanamo.

-- The use of Guantanamo for return is not consistent with the base Agreement for the Lease to the United States of Lands in Cuba for coaling and naval stations.

-- Movement by air or sea would put refugees at risk.

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-- 2000 hardened criminals would overtax Guantanamo which has no facilities to hold these. They would nearly outnumber the military personnel and present a serious threat to dependents and other civilians. This might require reinforcement of the Naval Base and possibly evacuation of dependents (2,220 military, 298 civilians, 109 non-U.S. citizens).

-- The return of uncooperative undesirables through North-east gate is not feasible because of physical layout and existing rules which prohibit U.S. military personnel from entering "no man's land."

-- Use of Guantanamo for the return of excludables to Cuba would require a significant back-up naval presence, a diversion from other operational/strategic requirements.

-- This could provoke bold Cuban retaliation such as threats to U.S. property and personnel at the U.S. Interests Section and Guantanamo, and/or another boatlift.

Suboption--Using Guantanamo to hold Undesirables

The Cabinet decided on July 13, 1981 to consider transferring the undesirable Mariel entrants to Guantanamo Naval Base and detaining them there. The foreign policy costs would be very heavy and have grave, practical implications for our continued use of Guantanamo. This should be considered only as a last resort.

PRO

-- Would avoid the domestic political costs of continuing to hold them within the United States;

-- Getting undesirable Cubans out of the U.S. would be viewed as an Administration victory.

CON

-- May be no more tenable in U.S. courts than continued detention within the United States, and could lead to other difficult legal problems;

-- Would violate the agreement under which we occupy the Base at Guantanamo, which expressly limits the purposes for which the facility may be used; if the U.S. breaches the agreement, then Castro has a legal cover for maintaining Cuba is no longer bound, or at the very least, a legal argument for his long-standing campaign attacking our use of the Base.

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-- Would make Guantanamo the most likely point of retaliation for Castro in response to any U.S. action he considered provocative;

-- Might give Castro an excuse to urge any Cuban who wishes to leave for the U.S. to get into Guantanamo; up to two million Cubans might leave the island if given the chance. Thus, the Base could be immobilized by sheer numbers or even taken over by Castro agents within the crowd.

-- Require exclusion proceedings since Guantanamo is not U.S. territory.

-- Would overwhelm base facilities, cause severe security problems and could set in motion events which might cause the loss of this strategic establishment. (For example, Cuba would easily be able to infiltrate further large numbers of undesirables and saboteurs.)

Option--Use of Suasion

We can pursue this option using either a Special Emissary or the Chief of our Interests Section in at least two ways. In either case we are addressing an issue on their terms, not ours, which would make us the demandeurs and give them advantage.

Suboption--Strong Representation

We can make very strong representations to the Cuban Government to arrange the return of Cubans excludable under U.S. law. This can be done either by sending an emissary to Cuba or through established diplomatic channels. This option was strengthened by the White House announcement on immigration and refugee policy which included contingency plans for dealing with mass, illegal migration. The calculus is that Castro will be more receptive to taking back the undesirables knowing he can no longer hold the U.S. hostage with the threat of another Mariel.

PRO

-- The best of a series of poor options available for returning excludables.

-- Would demonstrate to courts, American public, and other countries that Administration is making serious effort to return excludables.

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CON

- Could offer Cubans opportunity to engage us in talks;
- There is no guarantee that Cuban government or U.S. courts would allow us to implement return as quickly as we want.
- Castro could publicly represent this initiative as a sign that the Administration is willing to talk to him despite its rhetoric.

Suboption--Offer Quid Pro Quo to Cuba

Cuba's primary interest would be served by developing a safety valve to relieve frustrations among its populace. Over 200,000 Cubans are already registered for immigration to the U.S.; up to two million may want to do so. We cannot take that many and should not under any circumstances exceed the legal limit from any one country of 20,000 per year. This is the most attractive thing the U.S. can reasonably offer Cuba in return for taking back the excludables.

PRO

- Most valuable quid pro quo we have in return for Cuba's taking back excludables;
- Strictly in accord with U.S. law;
- Would be welcomed by U.S. Cuban community.

CON

- Would require establishing formal dialogue with Cuban government;
- Could be exploited by Castro as proof U.S. rhetoric stronger than practice;
- U.S. public does not want more Cubans.

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FACT SHEETCUBANS IN STATE AND FEDERAL DETENTION

<u>Criminals</u>	<u>Number Detained</u>	<u>Final Order of Exclusion**</u>
FCI Atlanta	1,206	792
FCI Petersburg	4	
FCI Bastrop	1	
FCI Alderson	1	
New York	200	
California*	50	
Pennsylvania*	8	
Wisconsin*	10	
Florida*	900	
<u>Non-Criminal</u>		
FCI Atlanta	213	
FCI Springfield	120	
MCC Chicago	23	
INS Detention - El Paso	42	
INS Detention - El Centro	28	
<u>"Mentals"</u>		
Saint Elizabeths'	53	
FCI Atlanta	117	
<u>Anti-Social and Other Problems</u>		
FCI Lexington	31	
FCI Atlanta	213	
TOTAL	3,220	792

The Office of Refugee Resettlement indicates a conservative estimate of 1,000 Cuban entrants who are potential revocation of parole cases due to sponsorship problems.

691 Cubans have been released from Atlanta of whom 95% have been in INS exclusion proceedings.

* Only the criminals in Atlanta have had exclusion hearings.

** Exclusions