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STATEMENT

OF
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DEPUTY ATTORNEY GENERAL
UNITED STATES DEPARTMENT OF JUSTICE

BEFORE

THE

SUBCOMMITTEE ON COURTS, CIVIL LIBERTIES
AND THE ADMINISTRATION OF JUSTICE
COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES

CONCERNING

THE MARIEL CUBANS

ON

FEBRUARY 4, 1988

Mr. Chairman, Members of the Subcommittee, I welcome the opportunity to appear today to provide you with a brief description of the events relating to the Mariel Cuban detainee uprisings at the Federal Detention Center in Oakdale, Louisiana, and the United States Penitentiary in Atlanta, Georgia, which took place between November 21 and December 4, 1987.

The events that we are discussing today were literally unprecedented in several respects in the history of American corrections. First, these prison uprisings were in no way due to conditions existing in the prisons themselves. Rather, the riots occurred as a direct result of external conditions outside the control of prison administrators -- events that centered on international politics. Second, the complete takeover of two major prisons within such a short period of time was, in itself, a significant matter. Furthermore, the taking of 102 hostages at one location and 36 at another -- either number alone representing a major hostage situation -- presented the Department of Justice with one of, if not the largest, hostage situations in our nation's prison history.

The Department of Justice is conducting a thorough and detailed review of the activities at each institution before, during, and after these crises. We will, of course, be prepared to discuss this report in detail after it has been fully reviewed by the Attorney General. Today, however, I would like to

summarize these events and answer your questions, and then Michael Quinlan, the Director of the Bureau of Prisons, and Alan Nelson, the Commissioner of the Immigration and Naturalization Service will be available to respond to any additional questions you may have after I leave.

I. Initial Notification

The Attorney General was first notified by the State Department at about 8:00 am Friday, November 20, 1987, of the reinstatement of the agreement normalizing the immigration relationship between the United States and Cuba, and of the intended announcement of that agreement at noon that same day. By 9:30 the Department had notified the Immigration and Naturalization Service (INS) and the Bureau of Prisons (BOP). Immediately thereafter the Director of BOP notified the two Regional Directors for Oakdale and Atlanta. They in turn immediately notified the Wardens of the pending announcement and its possible implications. Both Wardens were instructed to monitor their inmates carefully and to be especially sensitive to any indications of possible unrest or an impending disturbance. INS simultaneously notified the appropriate officials and field offices.

The Wardens, their Regional Directors, and the Director of the Bureau of Prisons fully discussed each institution's inmate

atmosphere, security capability, and staffing levels.

Oakdale's design consists of a campus-like compound, with housing units of predominantly open living areas which were consistent with the needs of its pre-screened, low medium security population and which could not be "locked down" in the traditional sense. Accordingly, Oakdale had limited capability to restrict closely the 1,038 inmates confined there at the time of the disturbance.

Atlanta is a massive, traditionally designed maximum security facility with a walled compound. Inmate housing at Atlanta is predominantly multiple occupant cells, but about 170 detainees, of a total detainee population of 1,394 at the time of the outbreak, were housed in open dormitories. As a result, a portion of the Atlanta population could not be secured in their housing units if a total lockdown were ever contemplated.

At the time the original 1984 United States - Cuba Repatriation Agreement was announced, Atlanta detainee reaction was tempered by a lockdown which was then in effect for reasons other than the announcement of the Agreement. There were only individual acts of defiance attributable to the Agreement, principally by those who were being removed from their cells for deportation.

Based on the information available to them in November 1987, BOP officials judged that attempting to institute a lockdown would virtually assure some degree of rioting in Atlanta, and realized that no lockdown was possible in the Oakdale facility. Accordingly, these officials unanimously agreed that the number of staff should be increased in several key areas of each facility, but otherwise that normal operations should be maintained as nearly as possible.

Staff at both Oakdale and Atlanta immediately began efforts to tell their inmates that normal operations were in the inmates' own best interests, and that the scope of the repatriation program was not yet fully known. By Friday afternoon Oakdale bilingual staff had distributed a written statement confirming that an agreement had been reached between the United States and Cuba, but assuring the inmates that parole reviews and halfway house and family paroles at Oakdale would continue. Staff at Atlanta immediately began to circulate among the inmates, engaging them in conversation, and requesting that they remain calm until more information was available about the scope of the agreement. At both locations inmates were advised that it was believed that only a minority of the detainees would be affected. Paradoxically, as staff were formulating their plans to notify detainees, the inmate population learned of the agreement from the media.

II. The United States - Cuba Agreement

The original 1984 Repatriation Agreement called for, among other things, the return to Cuba of 2,746 specific individuals who had been agreed by the two nations to be excludable from the United States. While it was in effect, 201 of the Mariel Cubans were repatriated. That agreement was then unilaterally suspended by Cuba in May 1985.

The reinstated agreement announced on November 20 provides for the normalizing of immigration between the United States and Cuba. "Normalization" includes three principal elements:

(1) The reinstatement of preference immigrant visa processing. This is the resumption of processing for relatives, other than immediate relatives, of United States citizens and lawful permanent residents. It also includes preference categories for individuals of exceptional ability and workers regardless of family ties to the United States. The processing of immediate relative visa petitions for spouses, parents, and unmarried children of United States citizens was not terminated during the time the Agreement was suspended.

(2) An expanded refugee program. With the restoration of the Agreement, expanded cooperation between the Governments of Cuba and the United States will result in a normalization of

refugee processing. During the suspension, the INS traveled to Cuba on numerous occasions for special refugee processing.

(3) The return to Cuba of the remaining aliens agreed to be excludable under the 1984 agreement.

Under this agreement, we will follow procedures identical to those that are followed with other nations with whom we have full immigration relations.

III. The Prison Uprisings

A. Oakdale

After the announcement of the agreement, there were building signs of unrest, and staff took what they believed to be adequate precautions. The Oakdale disturbance began at about 6:30 pm after dinner, on Saturday, November 21, when 200-300 inmates made several intermittent attempts to storm the front entrance lobby in efforts to escape. When these attempts failed, other attempts were made to escape over the perimeter fence. These attempts were halted by law enforcement personnel. Large groups of inmates then began to destroy and set fire to buildings and to seize staff as hostages. In the course of the next several hours a number of staff were able to escape; others found themselves in

life-threatening situations as a result of the fires consuming the institution. In some cases they were able to escape through acts of heroism by staff and even some friendly inmates. Eventually detainees took over all buildings in the compound, looting and burning all but the housing units. A total of thirty-six hostages were taken, 10 of whom were released at various points during the crisis and the negotiations.

B. Atlanta

BOP took extensive precautions at Atlanta, both prior to and after the Oakdale riots began. Additional staff, as well as the Warden, were on duty during the weekend. After word of the Oakdale disturbance reached Atlanta, there were some signs of tension within the institution. The staff concluded, however, that a major outburst was unlikely. Nevertheless, additional staff remained on duty over the weekend, while others were held in reserve, and the Warden conferred extensively with his Regional Director and Central Office staff in Washington. Weekend operations were essentially normal.

On Monday morning, November 23, the Warden and top staff met at 6:00 am and decided to approve a regular work day as scheduled and to release the inmates from their housing units. By mid-morning, however, there were signs that the inmates were acting in an unusual manner, and late in the morning a number of

disturbances broke out throughout the sprawling facility. Inmates set fires and looted buildings, and one inmate was shot and killed by a tower officer while attempting to assault a staff member. This was the only fatality directly related to the uprisings. A total of 102 hostages were eventually taken at Atlanta, 13 of whom were released at various times during the crisis.

IV. Efforts to resolve the crisis

The Attorney General personally directed the Department's efforts to resolve the two disturbances. He pulled together various components within the Department, including BOP, INS, the FBI, the Community Relations Service, and the Marshals Service, as well as elements within the Department of Defense, in order to secure the perimeters of the institutions and to work toward release of the hostages. He chaired briefings every morning, including weekends, on the status of both institutions, and maintained personal contact with key personnel of the many agencies involved in the crisis. Every major decision throughout these crises was made by the Attorney General.

At the outset of the Oakdale uprising, the Department and the Bureau of Prisons immediately put into effect emergency plans. These plans call for, among other things, notification of

local law enforcement authorities and close coordination with both BOP regional offices and the Central Office in Washington, DC. In addition, the Department endorses the practice of negotiating with hostage-takers as long as the safety of the hostages is assured. We believe, on the basis of research and experience, that the negotiation process, the Stockholm Syndrome of hostage/hostage-taker identification, and the passage of time generally work in favor of a peaceful solution. While this is not always the case, all indicators at both locations were that the detainees were concerned about the safety of the hostages, and were protecting them to the degree they could.

Negotiating for hostages in a correctional setting presents special difficulties. The Oakdale and Atlanta situations presented a number of additional complications, including the type of inmates holding the hostages and related cultural and linguistic differences, the general mistrust of authority held by the detainees as a group, the sheer number of staff in detainee hands, and the desire of the media and other individuals to become part of the negotiation process. Taken together these factors presented agency negotiators with a very complex set of problems, and demanded nearly inexhaustible amounts of patience.

Crucial to the successful negotiations were the skilled and experienced negotiators from BOP and the FBI, who were assisted

by all of the Department components under the Attorney General's direction. The detainees were assisted by Atlanta attorney Gary Leshaw. In addition, during the negotiations the Department consulted with leaders of the Cuban American community, including key on-site participation by Bishop Agustin Roman.

The talks at Oakdale reached a successful conclusion on November 29, at approximately 3:30 pm EST, and the detainees released their remaining hostages, none of whom were killed or seriously injured. The detainees immediately began surrendering themselves to the staff, and by noon the following day all processing was completed and the entire inmate population removed to other facilities.

We then shifted our efforts, on an intensified basis, to resolve the Atlanta uprising. The resolution of the Atlanta crisis required several additional days of negotiations after the Oakdale settlement. Contributing to this delay were demands that no Mariel Cubans would be repatriated to Cuba -- demands to which the Department obviously could not accede. The negotiators relied heavily on the settlement already reached at Oakdale and, with the invaluable assistance of Bishop Roman, ultimately convinced the detainees that the settlement was in their best interests. The Atlanta settlement was in all substantive respects the same as that reached with the Oakdale inmates, and

the Department agreed that the Oakdale and Atlanta inmates would be treated equally.

The settlement included the following principal elements:

1. Cuban detainees with families or sponsors who had already been approved for parole would have no arbitrary change made in their release decision.

2. The release of Cuban detainees without family or sponsors but who had already been approved for parole would be reviewed by June 30, 1988.

3. Cuban detainees who had not yet been reviewed would receive an expeditious review and would be treated the same as those detainees in categories 1 and 2.

4. Cuban detainees with medical problems would be sent immediately to medical facilities.

5. Cuban detainees approved for parole would be given appropriate INS documents and work permits when released.

6. Cuban detainees would not be held liable for damage to property or prosecuted, except for specific acts of actual assaultive violence or major misconduct -- not to include mere

participation in the disturbance, failing to leave the facility during the disturbance, or engaging in acts resulting in property damage.

7. Cuban detainees wishing to go to a third country and accepted by that country would be reviewed very quickly and allowed to depart, with proper documentation, and barring pending criminal actions.

8. There would be a moratorium on the repatriation of Mariel Cubans pending a fair review of each Cuban's status and eligibility to remain in the United States.

By 1:30 AM EST on December 4, all of the remaining 89 hostages were released unharmed. The detainees began to surrender to staff at noon that same day, and by the following day all of the detainees had been removed to other institutions.

V. Implementing the Attorney General's Review Programs

Central to the settlement ultimately reached was the Department's decision to impose a temporary moratorium on the deportation of Mariel Cuban detainees pending a full and fair review of each case, in addition to the extensive administrative and judicial procedures already available. In formulating the

review process, we consulted with a wide range of individuals and organizations who had requested involvement in the process, including Bishop Roman, the American Civil Liberties Union, the U.S. Catholic Conference, the American Jewish Center, the ABA, the Lawyers Committee for Human Rights, and a delegation of other Cuban Americans and Mr. Leshaw, as well as other groups. No responsible requests for consultation were refused.

Before I address the specifics of the review process, I wish to emphasize that the decision made by the Attorney General was for a full and fair review of each detainee's case, not a formal courtroom-type hearing. The procedures which we have adopted fully implement the assurances of the Attorney General that each detainee will receive a full and fair review of his circumstances.

There are a number of interrelated reasons for the approach we are following in the new parole and repatriation reviews. First, it must be remembered that the new review programs are in addition to the normal statutory and regulatory procedures that have been prescribed for dealing with the situation of arriving, excludable aliens. Except for certain special cases, arriving aliens cannot be involuntarily sent back without being given an exclusion hearing. That hearing is before an independent immigration judge, and the alien is given the opportunity, in an adversarial setting on the record, to present any evidence he may

have respecting his right to be admitted or respecting possible grounds for relief, such as asylum. The detainees have all either been found excludable under this process, or, as they continue to be brought into INS custody, will soon have the chance for their hearing. As you are all aware, a unanimous panel of the Court of Appeals, in Fernandez-Roque v. Smith, 734 F.2d 576 (11th Cir. 1984), overturned a lower court ruling that the Cuban detainees who were awaiting parole had a "liberty interest" in their parole from administrative detention. The court reasoned: "It is beyond dispute that aliens have no constitutional right to be admitted into this country. . . . Thus, if parole constitutes part of the admission process,. . . there would be no constitutional right to parole as well." Id. at 581. Based on its conclusion that parole is part of the admissions process, the court thus held that excludable aliens do not have a constitutional right to parole. In this and later decisions, the court found that the Attorney General's actions, in balancing the needs of the Mariel Cubans against the need for public safety, satisfied all requirements of the United States Constitution, federal statutes, and international law.

Second, the processes that we have established exceed those to which these detainees are legally entitled. Our new parole and repatriation review programs do give the detainees ample opportunity to present their cases, through documentary

submissions and with the opportunity for representation that may be available at no expense to the government. A careful process has been established that will enable a thorough and meaningful review, but without creating excessively costly and time-consuming proceedings which go beyond the statutory rights given such aliens by Congress. The programs we have established are fair to the aliens, and will allow effective implementation of the migration agreement with Cuba, under which we are limited to returning an average of 100 detainees per month.

Third, these Cubans have presented unique challenges to the United States in many respects, not the least of which is to the administration of our immigration laws. They are not, however, the only aliens who come here without visas and who wish to stay. Other aliens are regularly placed in exclusion proceedings, and are granted or denied immigration parole, all within the normal statutory and regulatory framework. We believe the approach we are taking with the Cubans is consistent with their peculiar circumstances, and also is one that will not create a precedent that could cause drastic changes in the way our country deals with excludable aliens generally.

In summary, we wish to go beyond that which the law requires. We have no desire to detain anyone indefinitely. In fact, only 125 of the total Mariel population of 125,000 -- i.e.,

one-tenth of one percent -- have been continuously incarcerated since their arrival in this country. The remainder of those incarcerated at the time of the disturbances had committed either crimes or parole violations.

Our goal is to assure that all appropriate individuals are paroled into the community as quickly as possible. With this goal in mind, we have implemented a "two-track" review process, which I would like to describe to you briefly today. The first "track" is the parole process, and the second is the repatriation process. Both the parole and the repatriation processes are occurring at this time.

A. Parole

Our parole program builds on the seven-year effort of the INS in this area. INS will continue to make initial determinations on parole pursuant to a two-tier system. Those cases for which parole has already been approved will be reviewed on the paper record by INS to determine whether any conduct subsequent to the initial approval warrants a change in status. Detainees still approved will be paroled as soon as family members or other suitable sponsors, or halfway houses, are arranged.

In those cases where parole is not approved based on the paper record, the detainee will be notified that an interview will be conducted. At that time the detainee is also notified of his right to have the assistance of counsel, to submit documentary evidence in support of his case, and to have the services of a translator to be provided by the Department of Justice. INS will send me a docket of all interviews scheduled, which I in turn will provide to Mr. Leshaw approximately two weeks prior to the interviews. Mr. Leshaw has offered to act as a "clearinghouse" for this information, to assure that detainees scheduled for interviews have adequate opportunity to consult with attorneys or other representatives. I have also provided copies of these dockets to any other interested persons, upon their request.

After the interview, the INS written recommendation is forwarded to an INS Central Office Review Committee in Washington, which decides whether to parole the individual or keep him in detention. This decision is made in writing and is forwarded, with a Spanish translation, to the detainee.

A detainee who is denied parole under the INS review procedures is entitled to a further review of his case by a new Departmental Release Review Panel, whose members are three persons designated by and under the general supervision of the Associate Attorney General. INS is not represented on the

Departmental Release Review Panels. Detainees who are scheduled for review by a Departmental Panel receive all of the same procedural rights and notifications as those provided during the initial INS review process. Dockets of these reviews will be provided to Mr. Leshaw. In their discretion, these Departmental Panels may make additional factfinding investigations or conduct a personal interview of the detainee. The decisions of the Departmental Panel are final and binding, subject to the ultimate authority of the Attorney General in parole decisions.

B. Repatriation

The second "track" of the review process for Mariel Cubans involves repatriation. This process is in addition to all of the normal administrative and judicial remedies afforded to these individuals within the statutory framework of the Immigration and Nationality Act. These normal remedies include review before the (1) Immigration Court; (2) Board of Immigration Appeals; (3) United States District Courts; (4) United States Courts of Appeals; and (5) United States Supreme Court.

Cases are selected for repatriation by a joint effort of the INS and the Office of Immigration Litigation (OIL) of the Civil Division. The only cases selected for repatriation are those in which there has been an administratively final order of exclusion

from an Immigration Court or Board of Immigration Appeals or those in which the individual volunteers to return to Cuba. Cases are selected on the basis of a number of factors, including the nature of any crimes committed by the detainee; the amount of time that has elapsed since the commission of the crime(s); and the behavior of the detainee while incarcerated. The focus in these cases is on those individuals who represent the most serious risks. Under this approach, there is a significant chance that an individual included on the original 1984 repatriation list will not be returned to Cuba if he has been paroled into the community and has had no record of criminal behavior or parole violations.

As in the case of the parole review process, a docket of repatriation cases will be prepared and sent to Mr. Leshaw. In addition, individuals scheduled for repatriation reviews receive the same notice and procedural rights as those provided in the parole reviews. The notification includes a questionnaire for the alien to return to INS/OIL setting forth reasons why he believes he should not be repatriated, as well as notification of his right to seek assistance of counsel in preparing this document.

The detainee's case, including material which he has submitted on his own behalf, is reviewed by INS and OIL. If they

decide to proceed with repatriation efforts, they prepare a memorandum summarizing the facts of the case, which is sent to the detainee (translated into Spanish), together with a notice of intent to deport and a form for the alien to complete in response to the government's memorandum, included in which will be notification to the alien that he may seek the assistance of counsel in the preparation of this document. Dockets of repatriation cases will be provided to me and to Mr. Leshaw, and to other interested persons, upon request.

The government's memorandum, the detainee's response, and the detainee's case files are sent to the Special Review Panel for Mariel Cubans. This Panel consists of the Associate Attorney General, the Assistant Attorney General for Civil Rights, and the Director of the Community Relations Service, or their designees. The Panel's function is solely to decide repatriation cases, and does not overlap with the parole review process. Its decisions are based on the written record, including the detainee's own submission; the Panel may also seek, in its own discretion, an oral interview with the detainee. As in parole reviews, the decision of this special panel is final, subject to the ultimate authority of the Attorney General.

We are confident that these procedures will assure every detainee the full and fair review which the Attorney General has directed. We also believe that the programs will better enable

us to treat every detainee fairly, in a manner consistent with our best traditions as a nation, while at the same time maintaining control of our borders and protecting the American public.

VI. The Aftermath

The review process that I have described is ongoing now. The procedural protections that the Cuban detainees are receiving under that plan are far more extensive than that required by law. The key to the success of this massive undertaking, however, is prompt parole for those persons determined to be eligible. Although we have paroled more than 200 persons in the last six months, we have approved approximately 1000 detainees for parole who are still awaiting sponsors or placement in halfway houses. We must -- and we will -- do better. The Department of Justice Community Relations Service has already taken action to accelerate the current outplacement rate. The halfway house capacity has been increased by 110 beds for FY 1988 using current resources. The CRS Family Placement Programs with the U.S. Catholic Conference of Bishops has been expanded from 50 to 300 clients, also using current resources. CRS is also attempting to identify methods of achieving administrative efficiencies in order to be able to direct additional current resources to the development of Mariel Cuban detainee outplacement from Federal

custody. We will continue to work with the Cuban American community to find family and other appropriate sponsors.

As a result of the Atlanta and Oakdale disturbances, the need to increase the Bureau of Prisons bedspace has become critical, with a sudden increase of system-wide inmate population from 156 percent to 162 percent of design capacity, in just two weeks. The sudden loss of nearly 2,500 beds is now creating additional overcrowding at other facilities, and is further complicated by the costly rental of prison bedspace with state agencies.

The Administration is currently reviewing plans to fund the costs of reconstruction and the aftermath of the riot within the restrictions of last November's budget negotiations.

VII. Conclusion

Summarized here is a series of historic events. We have learned a great deal. Some communication problems are evident now at several levels. Fortunately, while the damage to government property was significant, the human costs were far lower than expected. We have all learned from this experience, and we are now looking forward to finding solutions to the many

problems facing us in connection with this group of the Cubans who arrived nearly eight years ago. We believe that we are making good progress, and we hope to move even farther -- and faster -- with the support of the Congress.

This concludes my formal statement, Mr. Chairman. As I indicated at the beginning of my presentation, both Mr. Quinlan and Mr. Nelson are available and would be pleased to answer any questions you or your colleagues may have after I have finished.

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