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STATE OF NEW YORK

DEPARTMENT OF CORRECTIONAL SERVICES

THE STATE OFFICE BUILDING CAMPUS

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THE MARIEL CUBAN REIMBURSEMENT PROGRAM

EXECUTIVE SUMMARY

In 1980, approximately 125,000 Cuban citizens were allowed by the Cuban Government to migrate to the United States from the port of Mariel, Cuba. A small proportion of these immigrants (typically referred to as "Mariel Cubans") had criminal histories and/or mental health problems and would not have been allowed to enter the United States had they been properly screened. Although the federal government detained some of these individuals, others were released directly into American communities where they committed particularly violent criminal offenses and were sentenced to relatively long terms in state prisons.

The Mariel Cuban Reimbursement Program was established by the United States Congress in 1985 in recognition of the federal government's responsibility for costs incurred by states incarcerating individuals who would not normally have been allowed to enter American communities. While the states certainly welcomed this federal assistance, states are compensated for only a fraction of the actual costs of incarceration. In New York State, the average annual reimbursement received was approximately 10% of the actual costs incurred for incarcerating Mariel Cubans. For example, it is calculated that it will cost New York State \$12,263,494 to incarcerate Mariel Cuban inmates in 1991. The Department was able to secure only \$929,717 (or 8% of these costs).

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THE MARIEL CUBAN REIMBURSEMENT PROGRAM

ORIGINS OF THE PROGRAM

In 1980, approximately 125,000 Cuban citizens were allowed by the Cuban Government to migrate to the United States from the port of Mariel, Cuba. A small proportion of these immigrants (typically referred to as "Mariel Cubans") had criminal histories and/or mental health problems and would not have been allowed to enter the United States had they been properly screened. Although the federal government detained some of these individuals, others were released directly into American communities where they committed particularly violent criminal offenses and were sentenced to relatively long terms in state prisons.

The states of Florida and New York were hardest hit by the Mariel problem. In federal fiscal year 1991 there were 732 known Mariel Cubans incarcerated in Florida state prisons and in New York, there were 450 known Mariel Cubans serving time in a state prison. In contrast, the states of New Jersey and California had 175 and 173 known Mariel Cubans serving time in state prisons, respectively.

The Mariel Cuban Reimbursement Program was established by the United States Congress in 1985 in recognition of the federal government's responsibility for costs incurred by states incarcerating individuals who would not normally have been allowed to enter American communities. The appropriation for this national program was set at \$5,000,000. The enabling legislation limited the annual reimbursement amount that state's could request to \$12,000 per inmate (or \$1,000 per inmate per month).

APPLICATION PROCEDURES

Each year states are invited to apply for reimbursement for incarcerating Mariel Cubans under the Mariel Cuban Reimbursement Program. The Program is administered by the Bureau of Justice Assistance (BJA), a branch of the United States Department of Justice. In 1991, thirty-nine states applied for reimbursement under this program.

The submission date for state applications is no later than February 1 of the federal fiscal year. All states plus the District of Columbia and the Commonwealth of Puerto Rico are eligible to apply for reimbursement.

All applications must contain a standard Application for Federal Assistance form and a certified listing of incarcerated Mariel Cuban inmates under custody. The certified listing must separate inmates that had been verified in previous application years from inmates for whom reimbursement is being requested for the first time. (See Appendix A for a sample information sheet). This listing must contain the following information for each Mariel Cuban for whom reimbursement is being requested and in the following sequence:

- 1.) Name (Last Name First)
- 2.) Alias (Also Know As)
- 3.) Alien Identification Number Issued By The
United States Immigration And Naturalization Service
(INS)
- 4.) Inmate Number (Issued By The State Prison System)
- 5.) Date Of Birth
- 6.) Date Of Incarceration
- 7.) Probable Earliest Release Date
- 8.) Conviction Offense (Written In Descriptive Form Not
Referenced By The State Criminal Code)
- 9.) Date Of Conviction
- 10.) Last Known Address Of Mariel Cuban Inmate For Whom
Reimbursement Is Being Requested
- 11.) Name Of The State Prison Facility Housing The
Mariel Cuban Inmate For Whom Reimbursement Is Being
- 12.) Address of the State Prison Facility Housing The
Mariel Cuban Inmate For Whom Reimbursement Is Being
Requested

For Mariel Cuban inmates for whom reimbursement is being requested for the first time, the following information is also required:

- 13.) Federal Form I-247 (An Immigration Detainer Notice)
And A Copy Of The Detainer On The Prisoner If One
Has Been Filed By INS.
- 14.) A Fingerprint Card

This certified listing must be signed by the Governor or the Governor's authorized representative. In New York State, the Commissioner of the Department of Correctional Services is the Governor's authorized representative. In addition, since New York State requests more than \$500,000 for a given reimbursement year, it must supply BJA with a copy of the racial/ethnic background of its employees to demonstrate that it has established an Equal Employment Opportunity Program and is in compliance with the provisions of that program.

IDENTIFICATION AND VERIFICATION OF MARIEL STATUS

The definition of a Mariel Cuban for purposes of the Reimbursement Program is any person verified by INS as entering the United States from Cuba during the 1980 influx of Mariel Cubans who was paroled into the United States by the Attorney General. This definition distinguishes between Cuban immigrants who were officially recognized by the federal government as being part of the Mariel boatlift and other Cuban immigrants who were classified as having Entered Without Inspection (EWI), had arrived before the boatlift, and/or arrived after the boatlift would, therefore, not be classified as Mariel Cubans.

The Department routinely obtains alien status information and alien registration numbers from INS for foreign-born prisoners. It is the alien status information that indicates whether a Cuban-born inmate is classified as a Mariel by the federal government. While this procedure is the primary means for identifying Mariel prisoners for whom reimbursement will be requested, it is not the only procedure.

Unlike many federally funded programs, funds states receive for incarcerating Mariel Cubans are determined not by the number of Mariels incarcerated during the previous year, but by the number of months it projects Mariel prisoners will be incarcerated during the coming year. For example, for federal fiscal year 1990-1991 the application for reimbursement must be submitted to BJA by February 1, 1991. Reimbursement will be awarded to states for Mariels incarcerated between October 1, 1990 and September 30, 1991. (See Appendix B for an example of the reimbursement calculation method).

Because the Reimbursement Program requires a projection of the number of months Mariel inmates will be incarcerated during the federal fiscal year, any Mariel inmate placed under the Department's custody prior to the submission of the application would qualify for reimbursement. The Department, therefore, must monitor new admissions right up to the point of submission. However, since it typically takes eight to sixteen weeks to obtain alien status information from INS field offices, the Department must examine the files of all Cuban-born admissions for at least four months preceding the submission deadline for indicators of possible Mariel status. Self-reported dates of entry into the United States, alien registration numbers, and references in pre-sentence investigation reports are the primary indicators that an inmate may be a Mariel.

Although these indicators may suggest that an inmate may be a Mariel, only INS can verify an alien's status. Therefore, some inmates identified as possible Mariel Cubans may not be classified by INS as Mariels. The Department and the other involved states have no way to know this, however, until the application package is reviewed by BJA and the certified listing is cross-checked and verified by INS. Therefore, some inmates for whom the Department requests reimbursement may not be classified as Mariel Cubans and reimbursement will not be provided for those inmates. However, because of the need to include prisoners for whom alien status information is not yet known, the aforementioned procedure ensures that the Department's Mariel application is as complete as possible. BJA's review of the applications must be completed no later than April 1 of the federal fiscal year and reimbursement funds are immediately made available to the applicants.

LIMITATIONS OF THE REIMBURSEMENT PROGRAM

While the federal assistance is certainly welcomed this program provides only a partial reimbursement for incarceration costs incurred by states. To illustrate the discrepancy between actual costs and reimbursement funds the table in Appendix C provides information regarding 1.) the estimated cost of incarcerating an individual in a New York State prison, 2.) the total amount of reimbursement allowed by federal reimbursement legislation, and 3.) the amount of reimbursement actually received by New York State. These data are graphically illustrated in Appendix D.

These data show, that in 1991, it will cost New York State \$12,263,494 to incarcerate Mariel Cuban inmates. However, using the federally mandated reimbursement formula, New York State could only request \$5,634,000 (or \$1,000 per inmate per month) representing only 46% of the actual cost incurred. The actual amount of reimbursement received by New York State was \$929,717 (or \$186 per inmate per month) representing only 8% of the costs incurred. Therefore, New York, as well as the other participants in the reimbursement program, receives reimbursement for only a fraction of the costs it actually incurred for incarcerating Mariel Cuban inmates.

An additional problem with the current reimbursement scheme is that the annual appropriation has remained constant at \$5,000,000 since the program's inception in 1985. However, the costs of incarceration have risen in New York State from \$24,100 in 1985 to \$26,120 in 1990. Therefore, the compared proportion of operating costs for which reimbursement was received (i.e., the amount of reimbursement received to the estimated costs of incarcerating an individual) has decreased from 11% in 1985 ($\$905,669/\$8,220,040=11\%$) to 8% in 1991 ($\$929,717/\$12,263,494=8\%$).

Increasing operating costs, however, is not the only factor influencing the proportion of operating costs for which reimbursement was received. The actual amount of reimbursement received by a state in a given year varies due to changes in 1.) the number of Mariel Cubans incarcerated in that state's prisons during the reimbursement year, 2.) the number of months Mariel Cubans serve during the federal fiscal year (since some will be released prior to the end of the federal fiscal year and, therefore, be incarcerated for only a portion of the reimbursement period), and 3.) the number of Mariel Cubans incarcerated in state prisons **nationally**.

The number of Mariel Cubans under custody in a given state's prison system will change from year to year, rising and falling as new Mariels are incarcerated or reincarcerated, and as other Mariels are released from prison. Such variation in the number of Mariels under custody clearly affects the amount of reimbursement received by a state in a given year. Common sense would dictate that the more Mariels under custody in a given year the greater the amount of reimbursement received should be.

However, the variation from year to year in the number of Mariels under custody **within** a given state is not the only factor affecting the amount of reimbursement that the state receives. The admission and release process also affects the total number of Mariel Cubans incarcerated in state prisons **nationally**. Also, inmates who are released prior to the end of the federal fiscal year will be incarcerated for only a portion of the reimbursement period. In essence, it is the number of Mariel Cubans incarcerated **nationally** and the number of months they serve during the course of the federal fiscal year that determines how much the fixed \$5,000,000 reimbursement fund can pay for each month a Mariel Cuban is incarcerated.

For example, in reimbursement year 1989 there were 2,358 Mariels incarcerated in state prisons **nationally** having served a total of 24,603 months collectively. In contrast, during reimbursement year 1991 there were 2,560 Mariels incarcerated having served a total of 26,559 months collectively. BJA calculates the cost of incarcerating each inmate per month by dividing the annual appropriation by the total number of months served by Mariel Cubans collectively.

For reimbursement year 1989, the monthly reimbursement figure was derived by dividing \$5,000,000 by 24,603 which meant that each state was to be reimbursed \$203 for each month a Mariel Cuban was incarcerated. By comparison, the monthly reimbursement figure for federal fiscal year 1991 was derived by dividing \$4,963,000 (the full \$5,000,000 was not appropriated that year) by 26,559 producing a monthly reimbursement value of \$186. This meant that each state was paid less for each Mariel under custody in 1991 than it was paid in 1989 because the total amount of the fund (\$5,000,000) remained constant while the number of individuals it had to pay for and the number of months they were incarcerated both increased. Therefore, even if a state incarcerated more Mariels in 1991, it could conceivably have received less reimbursement money than it did in 1989 because it was being paid correspondingly less for each Mariel.

CONCLUSION

In summation, while the Mariel Cuban Reimbursement Program provides some financial relief to jurisdictions incarcerating Mariel Cubans, it covers only a fraction of the incarceration costs. While it may not be feasible to provide total reimbursement, it could certainly be argued that this fraction is not as large as it should be. In fact, New York State has been advocating an increase in the fund for several years through the governor's Office of Federal Affairs.

In addition, an increase in the reimbursement fund would certainly be justified on the grounds that operating costs have continually risen, while the reimbursement funds annually appropriated have remained constant. This problem is further exacerbated by the fact that the amount of reimbursement that a state receives in a given year is affected by the number of Mariels incarcerated not just in that state, but nationally.

APPENDIX A

(FICTIONAL CASE FOR PURPOSES OF ILLUSTRATION)

CERTIFIED LISTING

INMATE INFORMATION SHEET

1.)	INMATE NAME:	GARCIA, JOSE
2.)	AKA (ALSO KNOWN AS):	GARCIA-SANCHEZ, J. SANDS, JOSEPH
3.)	ALIEN IDENTIFICATION NUMBER:	A73 733 899
4.)	INMATE NUMBER:	81 T 9999
5.)	DATE OF BIRTH:	APRIL 21, 1954
6.)	INCARCERATION DATE:	FEBRUARY 5, 1981
7.)	PROBABLE EARLIEST RELEASE DATE:	JUNE 8, 1992
8.)	CONVICTION OFFENSE:	MURDER 2ND ROBBERY 1ST ASSAULT 1ST
9.)	CONVICTION DATE:	JANUARY 4, 1981
10.)	LAST KNOWN ADDRESS:	82 133TH STREET NEW YORK, NEW YORK
11.)	STATE FACILITY HOUSING INMATE:	ATTICA
12.)	STATE FACILITY ADDRESS:	BOX 149 ATTICA, NEW YORK 14011-0149
13.)	I-247 FORM - IMMIGRATION DETAINDER NOTICE:	PREVIOUSLY SUBMITTED
14.)	FINGERPRINT CARD:	PREVIOUSLY SUBMITTED

APPENDIX B

**METHOD FOR COMPUTING REIMBURSEMENT REQUEST
FOR FEDERAL FISCAL YEAR 1991**

Total Number of Mariel Cubans 504

Annual Amount of Reimbursement
Requested Per Case for Individuals
Under Custody for Entire
Twelve Month Period: \$12,000

Monthly Amount of Reimbursement
Requested Per Case for Individuals
Under Custody for Portion of Period: \$ 1,000

Part 1. Mariel Cubans Previously Certified
by Department of Justice

Total Number: 363

	<u>Number of Cases</u>		<u>Reimbursement Per Case</u>		<u>Reimbursement Requested</u>
Number Under Custody for Entire Period:	301	X	\$12,000	=	\$3,612,000
Number Under Custody for Portion of Period:	62				
Number of Months of Incarceration for Persons Under Custody for a Portion of Period:	379	X	\$ 1,000	=	<u>\$ 379,000</u>
			Subtotal	=	\$3,991,000

Part 2. Mariel Cubans Not Previously Certified

Total Number: 141

	<u>Number of Cases</u>		<u>Reimbursement Per Case</u>		<u>Reimbursement Requested</u>
Number Under Custody for Entire Period:	130	X	\$12,000	=	\$1,560,000
Number Under Custody for Portion of Period:	11				
Number of Months of Incarceration for Persons Under Custody for a Portion of Period:	83	X	\$ 1,000	=	\$ 83,000
			Subtotal	=	<u>\$1,643,000</u>
Total Reimbursement Request:					\$5,634,000

APPENDIX C

MARIEL CUBAN REIMBURSEMENT PROGRAM

REIMBURSEMENT YEAR

	1985	1986	1987	1988	1989	1990	1991
AMOUNT OF REIMBURSEMENT							
RECEIVED	\$905,669	\$944,773	\$1,036,794	\$1,035,258	\$1,085,814	\$1,045,653	\$929,717
TOTAL AMOUNT OF							
REIMBURSEMENT REQUESTED	\$4,093,000	\$4,559,000	\$5,194,000	\$5,553,000	\$5,846,000	\$6,295,000	\$5,634,000
ESTIMATED COST OF HOUSING							
MARIEL CUBAN INMATES	\$8,220,040	\$9,155,744	\$10,591,328	\$11,700,575	\$12,422,750	\$13,702,227	\$12,263,494

APPENDIX D

COMPARISON AMONG ACTUAL COSTS, REQUESTED AND RECEIVED REIMBURSEMENT

MARIEL CUBAN

