
REPORT BY THE U.S.

General Accounting Office

Detention Policies Affecting Haitian Nationals

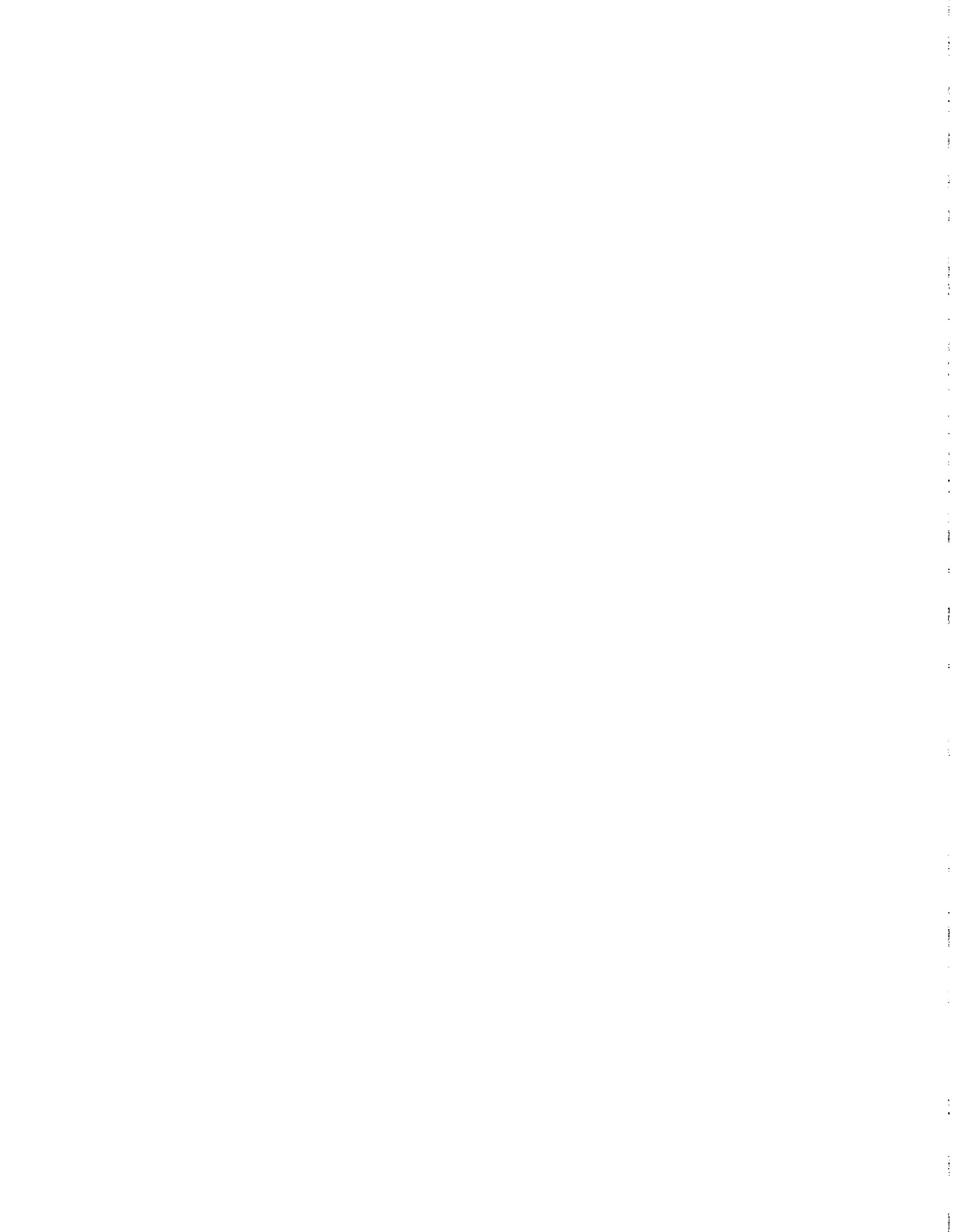
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In May 1981 the Immigration and Naturalization Service (INS) began routinely detaining excludable aliens (not authorized to enter) as part of the Administration's program to discourage aliens from illegally entering the United States to work. During the several years preceding this change, excludable aliens who were not considered a security risk or likely to abscond were generally paroled into the United States while waiting for a decision on their claims. The Haitian migration was but a small part of the total migration. However, Haitian nationals were disproportionately affected by the detention action--in terms of both the numbers detained and the length of detention.

This report contains information on INS' detention policy with respect to excludable aliens, the process used in selecting detention sites, the physical and health conditions of the detention facilities in which Haitians were detained, and the total cost to the Federal Government of detention.



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UNITED STATES GENERAL ACCOUNTING OFFICE
WASHINGTON, D.C. 20548

GENERAL GOVERNMENT
DIVISION

B-211782

The Honorable Walter E. Fauntroy
House of Representatives

Dear Mr. Fauntroy:

This report responds to your request of November 19, 1981, that we review certain policies and practices of INS related to the detention of aliens seeking asylum in the United States. Specifically, the report discusses INS' detention policy with respect to excludable aliens, the process used in selecting detention sites, the physical and health conditions of detention facilities in which Haitians were detained, and the total cost to the Federal Government for the detention of Haitians.

As arranged with your office, we plan no further distribution of this report until 30 days from its issue date, unless you publicly announce its contents earlier. At that time we will send copies to the heads of the Federal agencies involved and other interested parties. Copies will be made available to others upon request.

Sincerely yours,

W. J. Anderson

William J. Anderson
Director



D I G E S T

In recent years the Immigration and Naturalization Service (INS) has taken into custody an increasing number of aliens attempting to enter the United States illegally. Some of these "excludable" aliens acknowledge to INS that they came to seek work, but they do not have immigration documentation or work authorization and are voluntarily returned to their homeland. Others assert a claim to enter, such as asylum, and are entitled to a hearing.

Weeks or months may pass before a final decision is made. Therefore, INS generally released, or paroled, excludable aliens who were not considered a security risk or likely to abscond into the United States in the interim. In May 1981, however, INS changed this policy and began routinely detaining some excludable aliens who in the past several years would likely have been paroled. As a consequence, many aliens, principally Haitians, were detained for long periods. Congressman Walter E. Fauntroy requested that GAO examine certain aspects of INS' detention policy.

Haitian migration to the
United States

In the early 1970s a pattern of unauthorized Haitian migration to South Florida by boat began to emerge. The early migrants were few in number but increased rapidly to a peak in 1980 of 15,093. INS reported in March 1982 that it had apprehended 47,666 Haitians since the early 1970s. Most remain in the United States; only 1,725 have been repatriated. A majority of the Haitians remaining in the United States have filed for asylum. (See pp. 1 to 3.)

INS' detention policy

All aliens without proper documentation evidencing prior authorization to enter the United States--excludable aliens--are initially detained if they come to the attention of INS. Some aliens volunteer to leave; others apply for admission and either are further detained or paroled into the United States until a decision is made by INS as to their admissibility. INS is the agency responsible for deciding whether to detain or parole aliens, and its regulations provide that such decision initially be made by district directors in charge of ports of entry.

Since May 1981, however, INS routinely has been detaining, rather than paroling, excludable aliens until a decision could be made as to their admissibility. The guidelines governing excludable aliens allow grants of parole only for emergency or humanitarian reasons, such as a serious medical condition, pregnant women, minors, and aliens with close relatives in the United States. (See pp. 5 to 7.)

Litigation has changed INS' procedures for handling excludable Haitians

The rights of excludable aliens have been greatly enhanced in recent years by litigation on behalf of excludable Haitian nationals. However, this litigation has also resulted in the temporary suspension of exclusion hearings, thus delaying the hearing process.

One series of lawsuits contested INS' refusal to allow aliens to present asylum claims as part of an exclusion hearing. These lawsuits and the agency's subsequent decision to revise its regulations to allow such claims to be presented resulted in interrupting exclusion hearings for Haitian arrivals for more than 3 years. (See pp. 8 and 9.)

Another series of lawsuits arose in response to actions taken by INS to transfer Haitian arrivals to various detention facilities located throughout the country. The lawsuits

alleged, among other things, that INS' detention policy acted to deny the Haitians access to legal counsel at their exclusion hearings and that the May 1981 change in policy to routinely detain, rather than parole, excludable aliens was illegal.

As a result of this litigation, the court ordered INS to submit a plan detailing how exclusion proceedings would be conducted in light of representations by private legal groups that pro bono representation (without charge) projects would be established in areas where Haitians were detained. (See pp. 9 to 14.)

The court also held that the May 1981 detention policy was null and void and reinstated the prior parole policy. As a result, the court ordered INS to release the Haitians in detention. Although the court declared the new detention policy null and void, it was over a procedural issue of not having given public notice of the change in detention policy. INS has remedied the procedural issue and remains committed to a strict detention policy. (See pp. 12 and 13.)

Detention seen as deterrent to illegal migration

INS began restricting paroles as part of the Administration's overall strategy to discourage the illegal migration of aliens to the United States to work. Detention, in conjunction with an interdiction effort, has been successful in reducing the known flow of undocumented Haitians. (See pp. 5 and 6.)

Contrary to expectations, however, it also resulted in the long-term detention of a large number of undocumented aliens, primarily Haitians. Over 1,300 had been held between 9 and 12 months at the time the release order was issued by the court in June 1982. (See p. 6.)

Detention facilities were
austere yet costly

INS was unprepared to provide care for so many individuals for so long. Historically, INS management and facilities have been geared to providing short-term care, and health and recreational programs did not meet long-term needs. According to INS and Public Health Service officials, detainees at times, lived under severely crowded conditions and were not provided basic amenities and services.

INS began routinely detaining illegal aliens in May 1981 even though it did not have sufficient space in its permanent detention facilities to accommodate the increase. To temporarily house most of the detained aliens INS capitalized on two facilities that had been acquired by the Federal Emergency Management Agency to accommodate the influx of Cubans during the Mariel Boatlift in early 1980--Krome North near Miami and Fort Allen in Puerto Rico. (See p. 17.)

INS surveyed many other possible sites for temporary use as short-term detention facilities, as well as sites for a permanent long-term detention facility. On February 11, 1983, the Attorney General announced plans to construct a new 1,000 bed permanent facility at Oakdale, Louisiana. (See pp. 22 to 27.)

The long-term detention of Haitians cost the Federal Government an average of about \$49 a day per detainee, although the costs varied from \$35 to \$65 depending on the facility. These costs were high compared to INS' costs for short-term detention in most of its service processing facilities which ranged between \$12 and \$18 a day. (See pp. 28 to 30.)

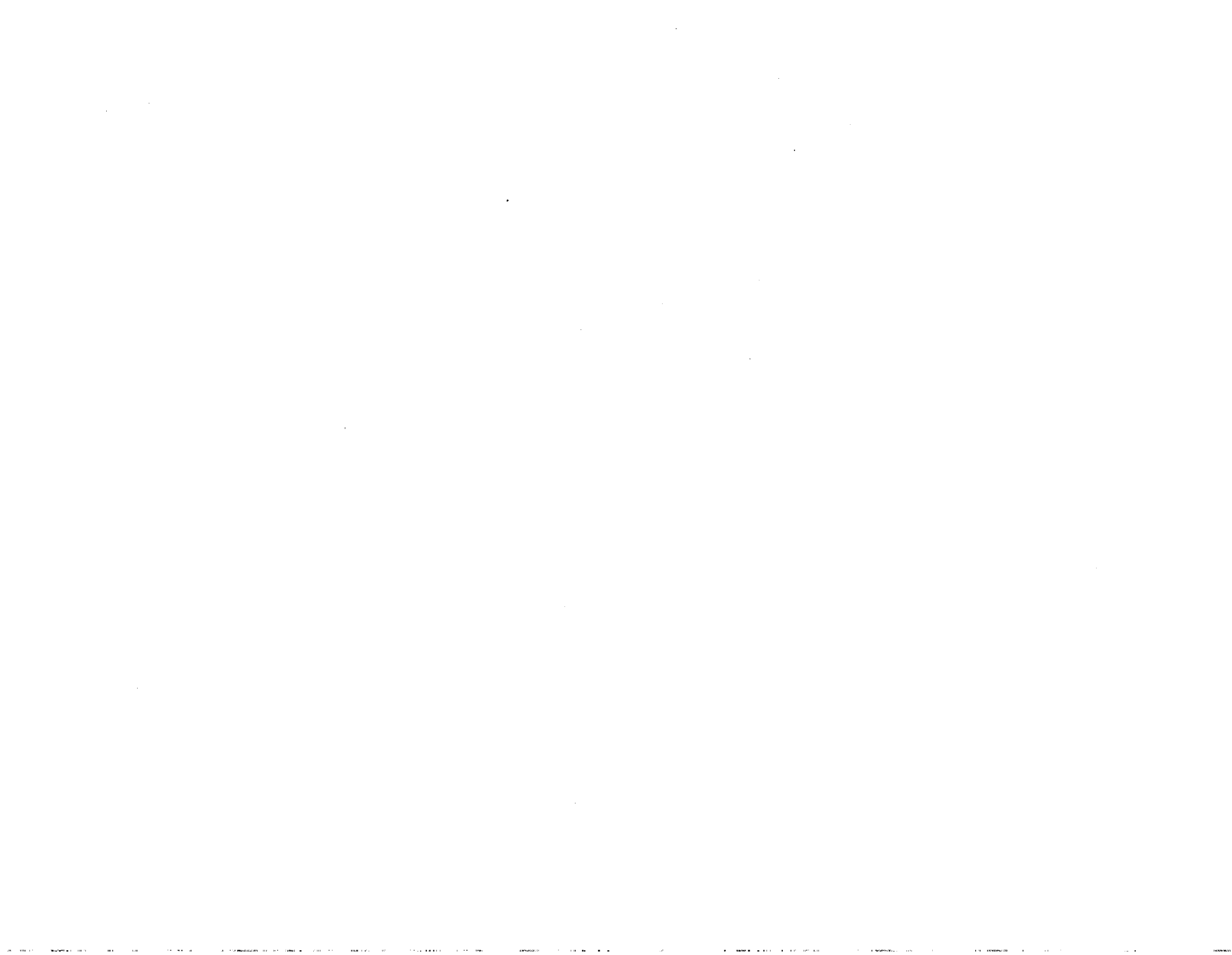
CONCLUSIONS

INS will, undoubtedly, be faced with the continuing choice of either paroling aliens or keeping them in detention for substantial lengths of time. The cost and the adverse humanitarian effects of long-term detention do not make it attractive as a normal way of

dealing with undocumented aliens seeking asylum. GAO believes that INS should work to achieve better alternatives than the extremes that detention and parole now offer. Such alternatives should seek to to avoid confinements of excessive length and excessive delays in processing claims of excludable aliens.

AGENCY COMMENTS

The Department of Justice provided written comments on the report which are included in appendix V. The comments, which consisted of suggestions to improve or update the text of certain statements and correct certain inaccuracies, have been incorporated in the appropriate sections throughout the report.



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ABBREVIATIONS

BOP	Bureau of Prisons
CDC	Centers for Disease Control
GAO	General Accounting Office
INS	Immigration and Naturalization Service
PHS	Public Health Service

CHAPTER 1

INTRODUCTION

In recent years, the Immigration and Naturalization Service (INS) has taken into custody an increasing number of aliens attempting to cross U.S. borders without their entry having been authorized in accordance with U.S. laws and regulations. INS categorizes these individuals as excludable aliens.¹ Some excludable aliens acknowledge to INS that they came to the United States to work and voluntarily return to their homelands because their presence in the United States without authorization documents is illegal. Others assert a claim to entry and are entitled to a hearing before an immigration judge. In some cases, weeks or even months may elapse before their exclusion hearing takes place and the decision is made on whether the alien is entitled to enter. In the interval between the alien's arrival and the decision, INS may elect to keep the alien in custody or to release him or her into the United States.

INS' policy in custody/release decisions became controversial about May 1981 when INS routinely began detaining aliens pending or involved in exclusion proceedings who in the past likely would have been released. As a consequence, many aliens, principally Haitian nationals, were held for lengthy periods. Congressman Walter E. Fauntroy requested that we examine the purpose of INS' policy of detaining certain classes of aliens seeking asylum and other related matters (see app. I). This report responds to that request.

CHARACTERISTICS OF HAITIAN MIGRATION TO THE U.S.

In the early 1970s, a pattern of unauthorized Haitian migration to South Florida by boat began to emerge. The early migrants were few in number but increased rapidly to a peak in 1980, as shown in the following table:

¹Excludable aliens are those who have been taken into custody at a U.S. border point and are not considered to have entered the United States. Deportable aliens, on the other hand, are those who arrived in the U.S. without proper authorization and have been taken into custody after entering the U.S. interior.

<u>Calendar year</u>	<u>Number of known arrivals</u>
1977	274
1978	1,815
1979	2,522
1980	15,093
1981	8,069
1982 (to 9/82)	99

The dramatic increase in 1980 began in March and was coincident with the beginning of the Mariel boatlift of Cubans into South Florida. The mass entry of Cubans had substantially ended in October 1980, after 125,000 had entered; however, the Haitian migration continued in sizeable numbers until November 1981. In March 1982, INS reported it had apprehended 47,666 Haitians entering or attempting to enter Florida without authorization since the early 1970s. At that time most remained in the United States; only 1,725 had been repatriated. The number who remain is small compared with a range of 3 to 6 million illegal aliens of all nationalities that are estimated to be residing in the United States.

The majority of excludable Haitians have filed for U.S. asylum, claiming a fear of persecution if they return to Haiti. However, Department of State advisory opinions provided to INS for use in deciding individual asylum claims have not supported most of the claims. Although the Department does not keep data on its advisory opinions by nationality, Department officials estimated that they had recommended disapproval of about 97 percent of all Haitian asylum claims on which the Department issued advisory opinions in 1980 and 1981.

INS statistics show that the percentage of asylum claims which INS denied varies widely by nationality (see app. II), while the percentage of denials for all nationalities among the cases decided in the period October 1, 1980, to May 31, 1982, was 72 percent. For Haitians the percentage was 91.

A Department of State official attributed the high rate of rejection of Haitian asylum claims to two reasons:

- The claims of applicants were so similar in specifying their cause for leaving Haiti as mistreatment by Ton Ton Macoutes, a local Haitian militia, that they lost overall credibility.
- The applicants had given INS other reasons for leaving Haiti when they first arrived in the United States.

The general presumption by the Department of State is that most Haitians migrate to the United States to escape deprived

economic conditions in Haiti, a presumption that is also made with respect to many other nationalities. Haiti is the poorest country in the Western Hemisphere.

U.S. immigration laws do not authorize undocumented aliens to enter the United States for purposes of escaping economic deprivation in their homelands, as it does for those escaping persecution. Aliens escaping economic deprivation may apply for appropriate documentation such as an immigrant visa within the numerical limitations on lawful admissions contained in the act. The categories of preference priorities contained in the act for allocating immigrant visas are based primarily on familial relationships or needed skills or professions.

CUBAN/HAITIAN ENTRANTS

On June 19, 1980, the Department of Justice granted Haitians and Cubans who arrived in the United States before June 19, 1980, and who were known to the INS, a special immigration status known as "Cuban/Haitian Entrant (Status Pending)" for a 6-month period. This designation was used to defer exclusion proceedings and to temporarily allow certain aliens to enter the United States while the Congress considered legislation that would allow them to remain. Such legislation was not enacted, however, in this 6-month period and the Department of Justice extended the status to June 15, 1981. It also broadened coverage to include Cubans who entered between April 21, 1980, and October 10, 1980, and Haitians, regardless of entry date, who were in INS proceedings as of October 10, 1980. Since legislation still had not been enacted, the Department of Justice on July 14, 1981, extended the special status until further notice. During the 97th Congress immigration reform legislation was considered which included provisions for granting the "entrants," as well as categories of aliens residing illegally in the United States, an opportunity to gain resident status. However, the legislation was not enacted prior to the Congress' adjournment.

OBJECTIVES, SCOPE, AND METHODOLOGY

This report responds to Congressman Fauntroy's request dated November 19, 1981, that we review certain policies and practices of INS related to the detention of aliens seeking asylum in the United States (see app. I). Specifically, he asked that we study the purpose of detaining aliens, the process used in selecting detention sites, the cost of detaining, and the physical and mental health standards observed at detention sites. He also requested that we determine whether use of a then-proposed facility at Fort Drum, New York, for detaining persons of Haitian nationality would constitute national origin discrimination.

To ascertain the purpose of detention, we interviewed INS officials, examined relevant documentation, and reviewed the findings of Federal courts in litigation that dealt with the detention issue. A large number of lawsuits have been filed on behalf of the Haitians concerning INS' regulations, procedures, and practices in dealing with excludable aliens. This report discusses only those cases that impacted INS regulations and procedures for processing excludable Haitians.

To determine the process used for selecting detention sites, we also interviewed INS officials and reviewed pertinent correspondence and reports made of site selection visits and deliberations. To determine the cost of operating detention sites at Krome North and Fort Allen, we examined pertinent cost records at INS Headquarters, the U.S. Public Health Service (PHS), and the Office of Refugee Settlement, which had assumed responsibilities and obligations of the Cuban-Haitian Task Force in June 1981. We obtained the cost of detaining Haitians in Federal correctional institutions from Headquarters, Bureau of Prisons (BOP). We obtained the cost of preparing the Krome North and Fort Allen detention sites from the U.S. Army Corps of Engineers. We did not verify the accuracy of the agencies' cost records. To ascertain the physical and health standards at the detention sites, we reviewed pertinent documents of INS and PHS and made onsite visits to the Krome North and Fort Allen detention sites. We did not independently assess the quality of health care provided. Since Fort Drum had been dropped as a prospective detention site before our fieldwork began, we did not perform any work related to that issue.

Our work was performed in accordance with generally accepted Government auditing standards.

CHAPTER 2

INS DETAINED EXCLUDABLE ALIENS TO DISCOURAGE

THEIR ENTRY INTO THE UNITED STATES TO WORK

INS began routinely detaining excludable aliens in May 1981 as part of the Administration's program to discourage aliens from illegally entering the United States to work. During the several years preceding this change, excludable aliens who were not considered a security risk or likely to abscond were generally paroled into the United States while waiting for a decision on their claims.

The Administration's program, which also contained legislative proposals such as denying employment opportunities to aliens illegally entering the United States through sanctions on employers, was directed at migrations of all nationalities. The Haitian migration was but a small part of the total migration. However, Haitian nationals were disproportionately affected by the detention action--in terms of both the numbers detained and the length of detention.

Over the past several years litigation in behalf of excludable Haitian nationals has substantially enhanced the rights of those seeking asylum in the United States. At the same time, these changes have substantially added to the time needed to complete an exclusion proceeding for asylum claimants. INS remains committed to a strict detention policy for aliens involved in or awaiting exclusion proceedings, even though, under optimistic circumstances, it will require weeks and even months to conclude such proceedings when aliens have applied for asylum.

DETENTION: A PART OF THE ADMINISTRATION'S PROGRAM TO DETER ILLEGAL IMMIGRATION

In March 1981 the President appointed a cabinet level committee, chaired by the Attorney General, to develop a program to deter illegal immigration. In July 1981 the Attorney General presented the program, which the President had accepted, before a joint hearing of subcommittees of the House and Senate Committees on the Judiciary. Subsequently, in March 1982 these committees introduced virtually identical bills for reform of the Nation's immigration laws. These bills contained many features included in the President's program. However, legislation was not enacted by the 97th Congress before adjournment sine die.

The President's program called for measures to restrict the employment opportunities available to aliens who illegally enter the United States as a means of discouraging future migrations. This was to be achieved, principally, by penalizing employers who knowingly hire illegal aliens. The program also provided for detention of aliens involved in or awaiting exclusion proceedings as another means of restricting employment opportunities. Legislation was required for authority to impose penalties on employers; however, the Attorney General had authority under existing legislation to set detention policy.

In commenting on our draft report the Justice Department stated that the Administration, noting that the statute required detention, concluded that allowing excludable aliens to work pending a decision on their right to enter the United States had prevented effective immigration processing under the law since the vast majority of individuals absconded and never showed up for hearings. Detention was instituted to ensure that individuals no longer avoided the legal processing by disappearing into the community.

EFFECT OF SHIFT IN DETENTION POLICY ON HAITIAN NATIONALS

From November 1977 to May 1981, excludable Haitians were routinely paroled under sponsorship arrangements with voluntary organizations and with work authorizations to allow them to support themselves until decisions were made on their cases. During this time INS released 765 aliens on humanitarian parole pursuant to detention policy guidelines. As a result of the new policy adopted in May 1981, the number of Haitians detained at any one time rose to 2,700 before approximately 1,700 were released from detention by a court order issued in June 1982. Over 1,300 had been held for between 9 and 12 months at the time the release order was issued.

Haitians nationals were disproportionately affected by the stricter detention policy--in terms of both the numbers detained and the length of detention--for a number of reasons.

- INS, without prior warning, began detaining new arrivals during a peak period of Haitian migration, and a heavy migration continued for several months before the change began to have effects.
- The conduct of exclusion hearings moved slow, owing to an INS procedural change whereby claims to asylum were heard by an immigration judge rather than the INS district director.

--Exclusion hearings were later suspended altogether by the court for detainees without attorneys for a period of 6-1/2 months until the inception of the Dade County Bar Association Pro Bono Program.

Excludable Haitians continued to arrive after stricter detention began

The principal pattern of excludable Haitian nationals' entrance into South Florida was ultimately stopped by the Administration's actions which, in addition to stricter detention, included stationing a Coast Guard cutter in the Windward Passage off the coast of Haiti in October 1981 to interdict those bound for the United States. The month-by-month trend over the period January 1980 to August 1982 is shown by the following table compiled from data in INS records.

KNOWN EXCLUDABLE HAITIAN ARRIVALS
MIAMI, FLORIDA

<u>Month</u>	<u>1980</u>	<u>1981</u>	<u>1982</u>
January	577	769	41
February	308	262	12
March	1,401	530	14
April	1,174	475	20
May	1,266	803	2
June	1,456	1,507	6
July	1,462	1,717	4
August	1,731	978	0
September	1,874	629	n/a
October	2,280	306	"
November	1,021	47	"
December	543	46	"

INS did not publicly announce its actions to discontinue the routine practice of granting of paroles or provide a period of warning when its stricter detention policy was implemented in May 1981. Thus, a heavy influx continued and the number of detainees increased rapidly until later in 1981. INS continued to detain until crowding in the temporary facility being used forced the temporary resumption of paroles until additional detention space could be arranged.

LITIGATION HAS CHANGED INS' PROCEDURES
FOR HANDLING EXCLUDABLE HAITIANS

Litigation in behalf of excludable Haitian nationals has resulted in substantially enhancing the rights of excludable aliens. While initially delaying the hearing process for many excludable aliens, the litigation ultimately affected the way

INS dealt with Haitian arrivals. A discussion of some of this litigation and its effects follows.

Asylum claims

Under an INS regulation which became effective in 1977, an alien's application for asylum had to be made to the District Director of INS, who "may approve or deny the application in the exercise of discretion." This regulation, 8 C.F.R. 108.2, also provided that the "decision shall be in writing and no appeal shall lie therefrom." The Attorney General had interpreted an exception in the regulation, which provided for hearing of asylum claims in a subsequent hearing, to apply only to deportable aliens. Relying on that interpretation, INS concluded that the regulation required that excludable aliens' asylum claims be adjudicated in a summary, nonevidentiary, final, nonappealable interview with the District Director and that immigration judges who presided over exclusion hearings lacked authority to hear asylum claims.

Under these circumstances Haitians whose claims for asylum had been denied by the District Director were considered to be excludable aliens by immigration judges. The judges, therefore, refused to hear their claims for asylum during exclusion hearings. This matter was litigated in Sannon v. United States, 427 F. Supp. 1270 (S.D. Fla. 1977), decided February 15, 1977. The court concluded that the interpretation of the regulation to exclude asylum claims from exclusion hearings was invalid and that the Immigration and Nationality Act gives immigration judges authority to hear and consider such claims. The court remanded the cases to INS for exclusion hearings during which asylum claims would be heard.

Three weeks after the Sannon decision, the United States Court of Appeals for the Fifth Circuit rendered its decision in Pierre v. United States, 547 F.2d 1281 (1977). As in Sannon, Pierre involved excludable Haitian aliens who claimed that INS procedures for deciding on asylum claims were unconstitutionally and statutorily inadequate. However, the Pierre court decided that the INS procedures were within the realm of discretion to be exercised by INS officials. The Supreme Court later vacated the Pierre decision on November 28, 1977, so that the lower court could determine whether the issue was moot. The Supreme Court's action was in response to the government filing a memorandum in November 1977 in which it stated that INS was:

"* * * [p]resently in the process of changing procedures so that an applicant for admission to the United States will be allowed to present his asylum application to an Immigration Judge in the course of an exclusion hearing."

As a result, the district court's decision in Sannon was vacated on January 5, 1978, by the Court of Appeals for the Fifth Circuit and remanded the case to the district court to consider the question of mootness.

Following the remand of Sannon, the district court enjoined INS from holding exclusion hearings involving Haitians until new regulations were properly promulgated. This occurred in open court on September 8, 1978, and then in a written order dated October 11, 1978. Regulations bearing on the litigation were properly promulgated on April 10, 1979. The new regulations, 8 C.F.R. 236.3 (1980), ensure that refugees wishing political asylum will be permitted to raise asylum claims in their exclusion hearings. In response, the district court issued a final order on January 7, 1980, dissolving the October 11, 1978, injunction with the provision that the new regulations be implemented by INS in a specific manner. Essentially, the January 7 order required INS to take specific actions to notify all potential and actual Haitian asylum claimants of the new regulations. On December 4, 1980, the Fifth Circuit concluded that the Haitians had received the relief sought in their lawsuit and ordered the district court to vacate its January 7 order and dismiss the Sannon case as moot.

The INS Commissioner ordered exclusion hearings for Haitians resumed in January 1981, while paroles still were being liberally granted. The backlog of Haitian exclusion cases dating to 1977, the revised process that involved hearings by immigration judges with the right to appeal, and the number of aliens failing to appear for their exclusion hearings all contributed to the fact that the backlog was not eliminated prior to the decision to detain new arrivals. In April 1981, the Commissioner ordered that the exclusion proceedings for the Haitians in detention be scheduled before those who had been paroled. Still, because of the growing numbers of arriving excludable Haitians and the time required to complete exclusion proceedings, the Haitian detainees faced extraordinary delays before their claims to asylum were decided.

Detention and access to legal counsel in INS hearings

After exclusion proceedings were resumed in January 1981, litigation again interrupted the holding of these hearings. This litigation dealt with a variety of claims, including the legality of the decision to detain and the denial of access to legal counsel in exclusion proceedings, and resulted in a preliminary injunction. The injunction restrained INS from holding exclusion proceedings for, or deporting, certain detained Haitian aliens.

Section 292 of the Immigration and Nationality Act, 8 U.S.C. 1362, provides that in any exclusion or deportation proceeding, and in any appeal proceeding therefrom, the person concerned shall have the privilege of being represented (at no expense to the Government) by such counsel as he/she shall choose. INS regulations, 8 C.F.R. 236.2(a) (1982), require immigration judges to inform an alien subject to an exclusion hearing that he/she may be represented by an attorney as provided in section 292. The regulation further requires that the alien be informed of the availability of free legal services programs located in the district where his/her exclusion hearing is to be held. This latter requirement was added to the previous regulations on January 23, 1979.¹ However, INS' treatment of the Haitian refugees beginning on July 17, 1981, resulted in litigation over an alien's right to counsel, notwithstanding the regulations in effect.

In Louis v. Meissner, 530 F. Supp. 924 (Southern District of Florida 1981), Haitian aliens brought class actions claiming that they were denied certain rights in their exclusion proceedings. This suit arose, in part, in response to actions taken by INS on July 17, 1981, to transfer Haitian arrivals out of the State of Florida to various detention facilities located throughout the country. The massive influx of Haitians arriving on the shores of Southern Florida severely overburdened the ability of INS to detain all of these individuals at the Krome North facility. In order to provide adequate facilities for these individuals and insure their safety and proper sanitary conditions, INS transferred individuals to facilities outside of Florida. The court concluded that INS thwarted the statutory rights of these aliens to representation in their exclusion proceedings by transferring them to desolate, remote areas, wholly lacking attorneys experienced in immigration law, or for that matter, willing to represent them. The court further concluded that these areas also lacked Creole-speaking individuals able to act as translators. The court contrasted this situation with the situation in Southern Florida, where the Haitian arrivals entered the United States, and there were a substantial number of available attorneys and translators. As a result, the court issued a preliminary injunction on September 30, 1981, restraining INS from holding exclusion proceedings for, or deporting, certain Haitian aliens who arrived in the Southern District of Florida (a Federal court district) after May 20, 1981, and who were held in detention at certain INS detention facilities pending exclusion proceedings.

¹This requirement was similarly added to other portions of Title 8 of the Code of Federal Regulations. For example, see 8 C.F.R. 235.6(a), 242.1 (c), 242.2 (a) and (b), and 242.16 (a) (1982).

In subsequent litigation, Louis v. Meissner, 532 F. Supp. 881 (S.D. Fla. 1982) the court granted, in part, the Government's motion to dismiss the Haitians' claims.² In its decision dated February 24, 1982, the court concluded that it lacked jurisdiction over four entire claims and parts of two others. The court's conclusion was based on its view that these claims would be encompassed in any final order of exclusion, and, therefore, that it is only after the exhaustion of administrative remedies and the entry of a final order that such claims are ripe for judicial review. Consequently, the court did not grant the relief requested by the Haitians. Nevertheless, the court noted that it appeared that much of the relief sought would be forthcoming based on INS representations to the court that individual exclusion hearings would be afforded, and pro bono representation (without charge) projects would be established in all areas where Haitian aliens are detained. The Court ordered INS to submit a plan detailing how exclusion proceedings would be conducted and retained jurisdiction over the case until the plan was operational. As such, the injunction previously issued remained in effect.

Three issues survived the court's order of dismissal. These were further addressed after trial by the district in its June 18, 1982, opinion, Louis V. Nelson, 544 F. Supp. 973 (S.D. Fla.), and in the June 29, 1982, final judgment (Louis v. Nelson, No. 81-1260-CIV-EPS S.D. Fla.), which implemented its June 18 opinion. The first issue on which final judgement was entered was whether the policy of detaining Haitians pending their exclusion proceedings was enforced in a discriminatory manner. The court concluded that the evidence showed that the detention policy was not motivated by the race and/or national origin of the Haitians, but rather that it was directed at excludable aliens unable to establish a prima facie claim for admission.

On the second issue regarding the procedure by which INS implemented its new detention policy, the court concluded that

²The case involved seven claims, three of which dealt with the alleged denial of counsel. Among the claims dismissed, in whole or in part, were allegations that INS (1) violated the Administrative Procedures Act by requiring aliens to appear for preliminary interviews without being permitted counsel, (2) violated its regulations by conducting mass hearings and/or not allowing each alien the choice of a private or public hearing, and (3) violated Section 208 of the act, 8 U.S.C. 1158, by failing to notify aliens of their right to claim political asylum.

the new policy violated the Administrative Procedure Act. The order held the detention policy to be null and void and the parole policy that was used prior to May 20, 1981, to be in full force and effect. The court then ordered INS to parole the aliens to responsible sponsors subject to conditions set forth in the court's order. INS was authorized to detain an excludable alien deemed a security risk or likely to abscond. This release was completed in October 1982. Although the court declared the new detention policy null and void, it was over a procedural issue of not having given public notice of the change in detention policy. INS has remedied the procedural issue and remains committed to a strict detention policy. In order to implement the policy, INS plans to increase its present detention capacity and, in addition, plans to prepare the new permanent facility to accommodate detainees whose cases require longer processing time.

The third issue was whether Haitians in detention have a First Amendment right of access to counsel and other persons and whether, in connection with their exclusion proceedings, that right was denied by INS. The court concluded that this issue was moot in light of the relief afforded by its final judgment ordering the release of the Haitians. The final judgment provided time frames and conditions for resuming exclusion hearings and notifying the Haitians of their right to secure counsel or have assigned pro bono representation. As a result of representations by various groups that pro bono representation could be afforded and the court's view that this effort should be attempted, the court stated its intent to continue the injunction enjoining exclusion hearings for unrepresented Haitians in detention until 90 days after the entry of the final judgment.

In commenting on our draft report, the Justice Department said that this injunction remains intact to date, more than 300 days since the final order, although INS has made a formal motion before the court for its dissolution. At this juncture, a significant number of the class members are still unrepresented by counsel and thus are unable to be scheduled for exclusion hearings. While pro bono attorneys have offered renewed assistance to this program, INS maintains that the geographic distribution of the individuals throughout the United States will make this representation effort a difficult task.

On April 12, 1983, the United States Court of Appeals for the Eleventh Circuit issued its decision to appeals from the district court's judgment. The Court of Appeals affirmed the district court's judgment that the Administration's shift from a policy of general parole to one of generally detaining undocumented aliens constituted a rule subject to the notice and comment rulemaking requirements of the Administrative Procedure

Act, and that the Administration's failure to comply with the act rendered the new policy invalid. Therefore, the court upheld the ordering of a return to the old policy, under which parole generally was granted, and of a release of the Haitian refugees incarcerated by the Government.

Prior to the trial resulting in the district court's judgment of June 18, 1982, a number of claims were dismissed in Louis v. Meissner, 532 F. Supp. 881 (S.D. Fla. 1982), previously discussed. The appeal addressed two of these dismissed claims: (1) whether aliens appearing for a preliminary hearing are entitled to counsel and notice of that right, and (2) whether INS must notify aliens of their right to file for political asylum. The appeals court agreed with the dismissal of the counsel claim for the reasons cited by the district court: projects had been established to provide counsel for aliens in subsequent exclusion hearings and a violation of the right to counsel would be encompassed into a final order of exclusion. However, the appeals court disagreed with the dismissal of the asylum claim, concluding that "failure to notify an alien of the right to claim asylum, thereby closing the door entirely on the process, must violate the right to present a petition for asylum."

The appeals court also addressed an issue which, after trial, had been dismissed as moot. Because the district court had ordered the release of the detained Haitians, it decided that the merits of restrictions imposed by INS on Haitian access to legal counsel and on attorneys from approaching Haitians to inform them of their legal rights need not be addressed. The appeals court agreed with the Haitians that such access rights must be protected, but it recognized that there must be balancing between such rights and the Government's interest in detention and security. Accordingly, while the appeals court agreed with the Government not to impose immediate relief, it remanded the issue to the district court for review of the Government's access restrictions.

Finally, the appeals court reversed one finding made by the district court after trial. The district court concluded that although the Haitians bore the brunt of the new immigration policy to a degree greater than any other nationality at that time, INS intended the enforcement of such policy to be fair and, therefore, the Haitians had not satisfied their burden of proving intentional discrimination. The appeals court held otherwise, concluding that the Government failed to rebut the evidence of discrimination. The appeals court then remanded this issue for such relief necessary to remedy the discrimination. Noting that the release of the Haitians already had been ordered for other reasons, the district court was directed to supplement that order with additional terms, including but not

limited to an injunction against discriminatory enforcement of the new policy, continued parole, and recordkeeping requirements so that the court may review future policy enforcement.

EXERCISE OF PAROLE AUTHORITY
IS INS MANAGEMENT PREROGATIVE

The law vests parole authority in the Attorney General. Through the extensive litigation discussed above, the Attorney General retains undiminished authority to set parole policies and procedures. The liberality with which the parole authority has been used has varied over the years.

Section 235(b) of the Immigration and Nationality Act of 1952 (8 U.S.C. 1225) prescribes that aliens entering the U.S. who may not appear to the examining immigration officer to be clearly and beyond a doubt entitled to enter will be detained for further inquiry by a special inquiry officer.³ However, section 212(d)5 of the act (8 U.S.C. 1182) provides that the Attorney General may, in his discretion, parole detained aliens for "emergent reasons or for reasons deemed strictly in the public interest" and "under such conditions as he may prescribe." This authority has been delegated by regulation (8 C.F.R. 212.5) to INS district directors in charge of ports of entry.

In a footnote to its June 18, 1982, opinion in Louis v. Nelson, discussed above, the District Court traced a deemphasis in the use of the detention provisions in the act to 1954 when the Ellis Island detention center was closed. At that time a policy, which was never formally promulgated, was then established that aliens seeking admission into the United States should not be placed in physical incarceration unless they were a security risk or were likely to abscond. The risk of a paroled alien absconding could be reduced by requiring bond.

This policy was relaxed in November 1977 for Haitians when the INS Commissioner ordered the general release of Haitians in detention without bond while exclusion proceedings had been suspended due to litigation to allow INS time to revise regulations relating to such proceedings. Sponsorship arrangements with voluntary agencies were accepted in lieu of bond. This action avoided having to detain the Haitians for lengthy periods while the regulations were being revised.

³Section 235(b) does not apply to certain classes of aliens, such as alien stowaways and aliens who are determined to have entered the United States for purposes of engaging in political or other activities not in the interest of the United States.

Even though proper regulations were promulgated in 1979 and exclusion hearings were resumed in January 1981, this general parole policy was continued until May 20, 1981. At that time, INS again began utilizing the detention provisions of the Immigration and Nationality Act for Haitian arrivals. Detention then became an instrument of a broader immigration policy to deter illegal immigration into the United States, although INS officials told us that they were concerned about the number of "no shows" at Haitians exclusion hearings.⁴

In this change in policy, district directors again began making individual parole decisions. Initially, paroles were granted to several hundred Haitians because of a shortage of detention space. Later, after the opening of the Fort Allen facility in August 1981, the granting of paroles became more selective. During the period August 1981 through June 1982, when the detainees were ordered released from detention by the Court in the Louis v. Nelson case, INS granted 687 paroles (see app. III).

In December 1981, the INS Commissioner issued guidelines for district directors to use in granting paroles. However, the guidelines were not specific and generally relied on the discretion of the district directors in deciding whether to grant parole. Generally, the guidelines recommended parole only for humanitarian reasons, such as for aliens with a serious medical condition, for pregnant women, and for minors (children under age 16). They also recommended parole for aliens with close relatives in the United States who were eligible to file a visa petition in behalf of the alien. The guidelines recommended parole in other situations where detention was impossible or impractical but suggested that suitable bond may be required.

CONCLUSIONS

The detention of aliens was part of a broader program of the Administration to deter the illegal immigration of aliens of all nationalities into the United States to work. The Administration also proposed that employers who knowingly hired illegal aliens be penalized. However, this step required legislation, but the Congress has not enacted such legislation.

⁴INS records showed that during the period March 5 to May 28, 1981, over 300 "no shows" were encountered among the 500 or so cases scheduled, and that during the period February 18 to July 16, 1982, 2,429 Haitians failed to report out of 3,311 that had been scheduled. We did not attempt to determine the reasons for the large number of "no shows."

Detention, which did not require legislation, disproportionately affected Haitian nationals because of an extraordinary set of circumstances which delayed the process. Certain procedural changes made by INS and others mandated by the courts have substantially increased the time required to reach a final decision of Haitians' asylum claims. However, the combination of detention and interdiction of boats transporting Haitians to the United States was successful in reducing the flow of known undocumented Haitians.

CHAPTER 3

HAITIANS WERE DETAINED UNDER

SPARTAN CONDITIONS

INS was unprepared to provide care for so many individuals for so long. INS management and facilities had been geared to providing short-term care to detainees, and with the Haitians INS faced an entirely different situation. The housing and services provided to the Haitian detainees were unsuitable for the lengthy detention and health and recreational programs did not meet long-term needs. According to INS and PHS officials, at times, the detainees lived under severely crowded conditions, and were not provided basic amenities and services.

INS DETENTION FACILITIES ARE GEARED FOR SHORT-TERM CARE

Prior to the addition of Krome North as a permanent short-term facility, INS operated four permanent detention facilities, known as service processing centers. These centers are used primarily for short-term detention. In 1980, INS reported that 75 percent of the aliens detained were released into the United States on bond or on their own recognizance, or were allowed to leave the United States within 48 hours. The majority of the remaining detainees were either deported or allowed to depart from the United States voluntarily within 7 days. Less than 1 percent remained in custody for more than 30 days. INS statistics showed that for an 18-month period ending March 1981, detainees were held an average length of 3.3 days. Its statistics did not allow an analysis by nationality.

Most of the Haitians were not housed in INS' permanent detention facilities, which, in total, had a capacity of less than 1,400. Rather, they were housed in temporary facilities which had been set up to cope with the influx of aliens during the Mariel boatlift.

CONDITIONS AT FACILITIES HOUSING HAITIANS VARIED

Most of the Haitian detainees were housed at Krome North, Fort Allen, and at various Federal correctional institutions. Some were housed in INS' Brooklyn service processing center and at local jails. Minors and some of the pregnant women were housed in privately operated facilities (see app. IV). The conditions and level of care varied by facility.

Conditions at Krome

At the time INS began restricting paroles, the Cuban-Haitian Task Force ¹ was converting Krome North from its use as an outprocessing facility for Cubans that arrived in the Mariel boatlift in 1980 into a permanent short-term facility, with a capacity to house 524 detainees. This was part of a contingency plan in the event of further mass arrivals such as occurred during the boatlift. It was to serve as an initial screening center until such arrivals could be transferred to Fort Allen, which was being maintained on standby for that purpose.

By July 1981, up to 1,530 Haitians were being crowded into the Krome North facility. Underscoring the seriousness of overcrowding, the INS district director wired the INS Commissioner on June 12, 1981, and declared the overcrowding critical. In particular, he expressed concern over the possible contamination of drinking water from wells because the sewage plant was allowing effluent of nontreated raw sewage to flow into the settling basin. In addition, he stated that the 90-degree heat was causing additional health hazards.

Under pressure from the State of Florida, Dade County, and others INS began in July 1981 to reduce the population at Krome North by sending some detainees to BOP correctional institutions. The overcrowding was further relieved by opening the Fort Allen facility in August 1981. Still, some overcrowding continued and minimum care conditions prevailed at Krome North. For example, the following deficiencies were reported by an INS Headquarters' official who visited Krome North on November 18 and 19, 1981:

- Overcrowding.
- Lack of clothing (no extra set of clothes when clothes needed washing and no sleeping clothes).
- Detainees had to wash clothes by hand in showers and basins because the washing machine was not operative due to limited sewage capacity.
- Recreational facilities were inadequate, leading to debilitating idleness.

¹The Task Force was established in July 1980 within the Department of State for the purpose of managing Federal actions relating to the influx of Cubans and Haitians in South Florida.

- The compound had no shade.
- No classrooms were suitable for holding English classes.
- Dental problems were severe and endemic.
- Pregnant women were on the same diet as the rest of the detainees.
- Some detainees were putting on weight because of idleness which was causing high blood pressure.
- Meals were based on a Hispanic diet and consisted of food not generally eaten in Haiti.
- There were too few interpreters to establish effective communication with detainees.

In commenting on our draft report, the Justice Department pointed out that beginning in February 1982 the following substantial improvements were made at the facility: installation of a soccer field and a volleyball field, upgrading of a softball field, and establishment of a recreational staff and recreational program. Continuing and effective improvements were made at the Krome North facility in order to deal with the unexpected longer term population there.

We visited the Krome North facility in June 1982, when the population had been reduced to about 500, and found conditions had been improved a great deal over those described. Although the facility was not intended to be used for long-term confinement, it appeared clean and orderly. The open dormitory space, however, deprived detainees of any semblance of privacy.

Conditions at Fort Allen

In contrast to Krome North, detainees were not crowded at Fort Allen. They were housed in large tent structures over wooden frames, each holding from 10 to 20 cots. The structures were reported to be very hot and afforded minimal protection from wind and dust. In addition, detainees were not provided mattresses for their cots.

By comparison with Krome North, inspections by INS, PHS, and BOP officials reported few criticisms of the conditions at Fort Allen. However, the detainees we interviewed in our visit to the facility in August 1982 said the cots without mattresses were uncomfortable and they had to cope by using blankets, clothing, and sheets as makeshift mattresses.

Conditions at Federal correctional institutions

Haitian detainees housed at Federal correctional institutions were housed separately from inmates but were provided a commensurate level of care. Complaints about the care in these institutions appeared to be minimal.

SHORT-TERM HEALTH SERVICES WERE AVAILABLE

PHS was responsible for health screening and delivering health care to Haitian detainees at INS facilities, while BOP medical staff provided these services for detainees at BOP facilities. PHS staffed a clinic at Krome North and contracted for clinic staff at Fort Allen. Patients who could not be treated at these facilities were referred to private care facilities. For the most part, PHS initially provided detainees only essential health care and did not provide elective surgery; prosthetics (eyeglasses, dentures); and other elective services until late in the detention cycle. We did not assess the quality of the health care provided but did observe that detainees at Krome North and Fort Allen had unrestricted access to medical services.

One Haitian was a suicide victim while in detention, and at least two others died of natural causes between March 1981 and June 1982. There were numerous other suicide attempts, and some Haitians received minor injuries during disturbances at the detention facilities.

During detention, about 168 Haitians at five detention centers developed gynecomastia, an enlargement of the male breast. The Centers for Disease Control (CDC), Department of Health and Human Services, investigated the ailment and concluded that the condition was temporary and caused either by the change in the detainees' accustomed diet or to exposure to an estrogen-like hormone. The CDC found that the breasts of many of the patients who had suffered the ailment had returned to normal size, and the size was decreasing in the remaining cases.

PHS noted that after about 6 months of detention, Haitian detainees became afflicted with increased psychiatric and psychological problems. They attributed this to the detainees' long separation from their families, uncertainties about their future, and boredom from idleness.

During June 1982, a team of Haitian Red Cross representatives visited Krome North and concluded that mental disorders had been one of the principal medical problems faced by the Haitian detainees, along with gynecomastia. They concluded further

that the mental health problems were a factor of the length of confinement and could not be resolved by improved detention conditions.

INS STILL PLANS FOR PERMANENT LONG-TERM FACILITY

Pursuant to INS' request, Congress has provided funds for an additional permanent 1,000 bed alien detention facility. INS officials told us that the expansion facilities will be designed to care for the longer term detainees and will meet standards prescribed by the American Correctional Association for such use. INS estimates that these permanent detention facilities will cost \$17 million, or an average of \$17,000 for each detainee space.

CONCLUSIONS

The Haitian detainees, for the most part, were housed in facilities that were unsuitable for long-term care. In addition, services and basic amenities were minimal. The mental health of long-term detainees was perhaps the most serious problem with which the PHS could not effectively deal.

CHAPTER 4

INS LACKED SPACE IN PERMANENT FACILITIES

TO HOUSE LARGE NUMBERS OF ALIENS DETAINED

INS generally began detaining illegal aliens in May 1981 even though it did not have sufficient space in its permanent detention facilities to accommodate the increase. In April 1981 INS surveyed a number of possible sites for temporary use as short-term detention facilities. It was able to capitalize on two facilities that had been acquired by the Federal Emergency Management Agency to accommodate the influx of Cubans during the Mariel boatlift in early 1980--Krome North near Miami and Fort Allen in Puerto Rico.

Because of overcrowding at Krome North, INS was continually seeking additional suitable sites for detention. INS was looking for another temporary site as well as sites for a permanent long-term detention facility. INS recently announced its plans to construct an additional permanent facility, at Oakdale, Louisiana.

SITES WERE SURVEYED IN ANTICIPATION OF DETENTION

In anticipation of a decision to detain undocumented aliens, INS surveyed seven potential sites in April 1981: Krome North and Krome South, near Miami; Eglin Air Force Base near Fort Walton Beach, Florida; Ellington Air Force Base near Houston, Texas; Hamilton Air Force Base near San Francisco, California; Craig Air Force Base, near Selma, Alabama; and a former military radar site at Roanoke Rapids, North Carolina. In addition, the survey included space that might be available at local jails in Florida, at Salvation Army facilities, and at BOP facilities.

In surveying these sites, the selection team made the following assumptions about future events and needs:

- All Cuban/Haitian arrivals would be detained pending expulsion, and between 1,500 and 10,000 would be detained for an indeterminate period.
- Adequate staffing would be provided to conduct exclusion/deportation hearings.
- About 40 percent of decisions by immigration judges in cases would be appealed to the Board of Immigration Appeals.

- The Department of State would place staff at detention centers to expedite asylum decisions.
- It would take from 1 to 3 months to complete the processing of a request for asylum.
- Court orders and court injunctions would not delay the processing of claims.
- New arrivals would decrease as a result of the detention policy.

Of these sites, the selection team recommended Krome North as the principal site and Krome South as backup for any immediate expansion needed. Ellington Air Force Base was recommended for use if expansion beyond the 1,500 spaces available at Krome North and Krome South was required. According to the selection report, this selection was based on cost, feasibility of short-term activation, capacity, physical attributes, location, availability of contract services, and community acceptance.

Krome North is a former Nike missile site in western Dade County and was used as a staging area during the Mariel boatlift and continued to be used to process undocumented Haitian arrivals. Tents had been used for housing. At the time the site was surveyed, the facility was being renovated. The selection team estimated that with the renovation of a 2-story main housing building, with 45,000 square feet, and one additional dormitory, with 4,000 square feet, up to 1,000 persons could be accommodated under hard roof. The team also estimated that up to 500 additional persons could be accommodated in tents within the 15-acre compound.

Krome South was part of the original Nike missile complex, located about 1 mile south of the Krome North site, and had been used to house up to 1,100 persons in tents during the Mariel boatlift. This site required the use of portable toilets because it lacked sewage treatment facilities. However, the selection team considered it suitable for housing up to 500 persons in tents on the 12-acre compound.

The Fort Walton Beach Fairgrounds, located along the south boundary of Eglin Air Force Base, also had been used to handle an influx of aliens during the Mariel boatlift. It had housed up to 10,000 persons in about 440 36-person tents. As a result of its use, some improvements had been made--a communications system and security fencing had been installed, and latrine and dining facilities had been constructed. Although the tents had been dismantled, the selection team considered that they could be erected again quickly to house up to 10,000 persons.

With respect to the other sites, the selection team reported:

- Ellington Air Force Base had 16 2-story dormitories which could be used to temporarily house from 1,000 to 2,000 aliens and had areas that were suitable for housing expansion.
- Hamilton Air Force Base had nine empty hangars that could be prepared within 30 days to house up to 4,000 aliens and up to 10,000 in an emergency situation, with capacity for even further expansion.
- Craig Air Force Base had sufficient housing for up to 5,000 aliens; however, the City of Selma, Alabama, upon which the facility would be dependent for utilities, had brought suit against the Federal Government in a challenge to the method being used to dispose of the deactivated base. The risk that the city would not provide needed utilities was considered too great.
- The Roanoke Rapids site had limited housing capacity and inadequate sewage facilities.

ADDITIONAL DETENTION
SITES WERE REQUIRED

A continuous review of available Government properties was conducted by INS in order to identify additional detention space. INS conducted a second formal survey of possible detention sites in June 1981. The purpose of this survey was to identify sites for a proposed permanent facility for which the Administration planned to seek funds and for an additional temporary site until the permanent site became available. Additional space was urgently needed because of overcrowding at Krome North.

In this second survey, Fort Allen near Ponce, Puerto Rico, which had not been considered in the earlier survey, was brought into the picture. It was evaluated in comparison with the site at Ellington Air Force Base, which the original selection team had favored as the most suitable long-term site. Although this selection team considered Fort Chaffee, Arkansas, as a candidate location from the standpoint of physical requirements because of its use in housing Cubans arriving in the Mariel boatlift, it was not considered a viable alternative because of the objections of the State's Governor to its use as a detention site.

The second selection team made the following new assumptions, among others, in selecting the site:

--Additional undocumented Haitians would continue to arrive in the Miami area.

--The policy of detaining all new undocumented arrivals would continue.

--INS would be precluded from deporting/excluding Haitians due to litigation for at least 30 to 60 days.

The team's task was to identify a suitable site that could be activated within 10 days to house up to 2,000 aliens for use in conjunction with Krome North until a permanent site could be activated. The team estimated the interim site would be required for about 6 months.

Fort Allen had been originally selected as a suitable detention location by the Cuban/Haitian Task Force. The facility had been readied for such use with the erection of tentlike structures for housing but had not been used because of litigation. However, arrangements had been made with the Navy to maintain the facility in a standby status in the event it became needed. In caretaker status, Fort Allen was prepared to receive 300 to 500 persons within 72 hours of a decision to activate and to be in full operational capacity, able to accommodate 2,000 persons, within 15 days.

The selection team also recommended Ellington as the site for the permanent facility and recommended activating Fort Allen to serve immediate needs. The team considered the following factors favorable to this recommendation:

--Fort Allen was available immediately.

--Necessary contract services were available immediately at Fort Allen.

--Both Fort Allen and Ellington were removed from a high density Haitian population.

--The economic impact on Puerto Rico would be beneficial.

--Both Fort Allen and Ellington had the capacity to house discrete populations; i.e., Cubans, Haitians, males, females, juveniles.

Factors not considered favorable were:

--Aliens would be housed in tents at Fort Allen.

- Fort Allen could house aliens only up to 6 months.
- Possibility of terrorist acts in Puerto Rico.
- Fort Allen would not provide easy access for attorney advocates and voluntary agencies.

INS estimated that it would cost \$20 million to activate and operate the Fort Allen facility for 6 months with a capacity of 2,000 and about \$53 million to activate and operate Ellington for 12 months with a capacity of 2,000.

Before Fort Allen could be used for the Haitian detainees, however, INS had to negotiate a settlement with the Commonwealth of Puerto Rico. INS was enjoined from using the facility, pending the decision on an appeal filed in the First Circuit in Boston by the Commonwealth. Because the case was not scheduled to be heard until September 1981, INS negotiated to remove the Commonwealth's objections and the injunction was lifted in July 1981.

SEARCH FOR PERMANENT SITE CONTINUED

Although Ellington had been recommended as a site for INS' planned permanent expansion of its detention facilities by the two previous selection teams, the INS Commissioner directed that the selection team extend the search beyond Ellington. The team consisted of three INS representatives and one BOP representative.

In addressing the need for the new facility, this selection team, in an April 1982 report, said the facility should be ideally located in the south-central United States, on a generally direct route to South and Central America, and be able to accommodate the longer term cases from Krome, Brooklyn, and the border facilities. Criteria used to evaluate the sites were physical attributes, costs, geographic location, public acceptance and operational feasibility (proximity to consuls, airport, hospitals and health care, availability of a workforce, and availability of housing for the workforce).

Sites at or near the following locations were considered:

- McAlester, Oklahoma
- El Reno, Oklahoma
- Glasgow, Montana
- Oakdale, Louisiana
- Bainbridge, Maryland
- Ellington AFB, Texas

The team's choice was contingent on whether the Administration decided upon INS or BOP to manage the new facility. If INS were chosen, the team recommended Oakdale, Louisiana. If BOP were chosen, the team recommended El Reno, Oklahoma. Among other considerations, the team pointed out that BOP's role in confining, punishing, and rehabilitating sentenced offenders made a facility less acceptable to Oakdale citizens.

In commenting on our draft report, the Justice Department stated that after considerable additional study and review of the attributes of Oakdale and El Reno, the Attorney General announced on February 11, 1983, that Oakdale had been selected for the construction of the 1,000 bed facility for reasons of community support, beneficial effect on a high unemployment area, and favorable climate. (The capacity was reduced from 2,000 beds during the Congressional budget process.)

CONCLUSIONS

Since INS did not have sufficient permanent detention space, it had to hurriedly consider temporary facilities in which to confine apprehended excludable aliens. Many of the problems associated with the temporary makeshift detention sites should be solved when INS brings its planned permanent detention facility on line. However, the planned facility will have a capacity of 1,000 and any large influx of aliens could again exceed INS' capability and require temporary detention facilities as in the past.

CHAPTER 5

DETENTION OF HAITIANS WAS COSTLY TO THE FEDERAL GOVERNMENT

The long-term detention of Haitians cost the Federal Government an average of about \$49 a day per detainee, although the cost varied between \$35 and \$65 depending on the detention facility. These costs were high compared to costs for short-term detention in most of INS' service processing facilities which ranged between \$12 and \$18 a day.

Cost was not an overriding consideration in the decision to detain. Consequently, INS had not made any comparison of the cost to detain versus the cost to parole.

DETENTION COSTS VARIED BY FACILITY

Determining the full costs of caring for the detained Haitians was difficult because expenses borne by several agencies in addition to INS were incurred prior to the date INS began detaining Haitians and for purposes other than the detention of Haitians. These expenses could not be easily identified.

Site preparation costs

As discussed in the previous chapter, INS used facilities that had been used earlier as detention sites by the Cuban-Haitian Task Force. The sites were prepared as a contingency in the event of other mass arrivals, such as those in the 1980 Mariel boatlift, and the preparation was unrelated to the change in detention policy in May 1981. The Task Force spent a total of about \$5.9 million to prepare the Krome North site and about \$12 million to prepare the Fort Allen site in fiscal year 1981.

Operating and maintenance costs

Total costs for detaining Haitians in fiscal year 1981 could not be determined reliably because not all the costs incurred were directly related to the change in detention policy but were an aftermath of the Mariel boatlift. In fiscal year 1981, for example, the Cuban-Haitian Task Force spent about \$5.3 million to maintain and operate Krome North and about \$7.9 million to maintain and operate Fort Allen. About \$4.4 million was spent at Fort Allen for caretaker services during the period December 1980 to August 1981 when it was not in use as a detention facility. In fiscal year

1981 the cost of detaining Haitians in Federal correctional institutions was about \$1.2 million. PHS did not segregate its costs for providing medical care at the multiple facilities where Cubans and Haitians were detained in fiscal year 1981, and the costs for Krome North and Fort Allen could not be readily ascertained.

During fiscal year 1982, a total of about \$38.5 million was made available to detain the Haitians as follows:

<u>Facility/Agency</u>	<u>Funding (in millions)</u>
Krome North	
INS	\$ 9.3
PHS	3.5
Fort Allen	
INS	15.5
PHS	3.4
Federal correctional institutions	6.0
Private institutions	<u>0.8</u>
Total	<u>\$38.5</u>

Average cost per detainee

The average cost per day per detainee amounted to \$49, but it varied among the major detention facilities as shown in the following table.

<u>Facility</u>	<u>Average daily cost (note a)</u>
Krome North	\$49
Fort Allen	\$65
Federal correctional institutions (note b)	\$35

a/In order to compute the daily costs we used total costs incurred beginning in October 1981, when INS assumed fiscal control for both Krome North and Fort Allen, and ending in July 1982, when the release of Haitians began.

b/Federal correctional institutions' costs are based upon a per capita average. Costs of certain facilities may be higher than others.

By comparison, the average daily cost per detainee for short-term detention at three INS service processing facilities were significantly lower. However, these facilities were not used for long-term detention of Haitians. For fiscal year 1981 INS reported the following costs per detainee day by facility.

<u>Facility</u>	<u>Cost</u>
El Centro	\$11.53
El Paso	\$15.89
Port Isabel	\$17.49

INS officials attributed the high cost of detaining Haitians at Fort Allen to the number of Haitians housed there relative to its capacity. Fort Allen had been prepared for contingencies by the Cuban-Haitian Task Force to handle other mass arrivals, such as that which occurred in the Mariel boatlift, and had designed the facility to care for 3,000 detainees, with containment space for an additional 2,000. However, by later agreement between the Attorney General and the Commonwealth of Puerto Rico, the number of detainees at Fort Allen could not exceed 800, except under emergency conditions.

Security costs at Fort Allen were also exceptionally high. The contracted security forces alone had a complement of 453 in August 1982. INS officials said that the large force was needed to patrol areas beyond the immediate enclaves where the Haitians were housed because of threats by local terrorist organizations to disrupt operations.

CONCLUSIONS

Part of the high cost of detaining the Haitians was, undoubtedly, due to the temporary nature of the Krome North and Fort Allen facilities. Assuming INS proceeds with its plans for a new permanent facility or facilities that principally will be used to house long-term detainees, future costs should be in the range of the costs incurred to house detainees in Federal correctional institutions, or an average daily cost of about \$35 per detainee. Because of the additional services long-term detainees require, the costs could be expected to be considerably higher than the costs INS reports for its detention facilities at El Centro, El Paso, and Port Isabel.

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November 19, 1981

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ECONOMIC STABILIZATION
GENERAL OVERSIGHT AND
RENEGOTIATION
HOUSING AND COMMUNITY
DEVELOPMENT

CHAIRMAN, CONGRESSIONAL
BLACK CAUCUS

Mr. Charles A. Bowsher
Comptroller General of the United States
General Accounting Office
441 G Street, NW
Washington, D.C. 20548

Dear Mr. Bowsher:

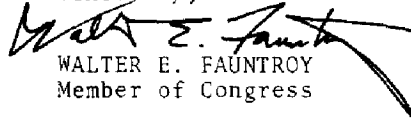
This is to request a study by the General Accounting Office into certain policies and practices of the Immigration and Naturalization Service.

Specifically, is it requested that a study be made of the:

- 1) purpose of the detention of certain classes of individuals seeking asylum,
- 2) selection process for Immigration and Naturalization detention sites
- 3) cost of maintaining 2500 aliens for an indefinite period, including the extra cost of providing winter clothing for Haitians should they be shipped to Fort Drum, New York,
- 4) physical and health standards required for Immigration and Naturalization Service detention centers generally, and for Fort Drum specifically; and,
- 5) If the conditions at Fort Drum constitute national origin discrimination.

Your attention to this request and execution of this required study will be greatly appreciated.

Sincerely,


WALTER E. FAUNTROY
Member of Congress

NUMBER OF APPLICATIONS FOR U.S. ASYLUM DECIDED
AND DENIED BY INS, BY NATIONALITY
OCTOBER 1, 1980 - MAY 31, 1982

<u>Nationality</u>	<u>Decided</u>	<u>Denied</u>	<u>Percentage denied</u>
Afghanistan	676	243	35.9
China	154	133	86.4
Cuba	497	490	98.6
El Salvador	662	617	93.2
Ethiopia	792	507	64.0
Iran	2,635	1,303	49.4
Iraq	811	757	93.3
Lebanon	324	309	95.4
Libya	68	13	19.2
Nicaragua	1,507	976	64.8
Pakistan	108	105	97.2
Philippines	100	93	93.0
Poland	1,631	1,481	90.8
Romania	156	91	58.3
Subtotal	<u>10,121</u>	<u>7,118</u>	<u>70.3</u>
All others	<u>1,546</u>	<u>1,269</u>	<u>82.1</u>
Total	<u>11,667</u>	<u>8,387</u>	<u>71.9</u>

PAROLES GRANTED TO HAITIAN NATIONALS
AUGUST 1981 TO JUNE 1982

August 1981	150
September 1981	107
October 1981	111
November 1981	65
December 1981	45
January 1982	27
February 1982	39
March 1982	23
April 1982	22
May 1982	40
June 1982	<u>58</u>
Total	<u>687</u>

INSTITUTIONS HOUSING HAITIAN DETAINEES
AS OF OCTOBER 23, 1981

Immigration and Naturalization
Service Facilities

Krome North (Florida)	1,206
Fort Allen (Puerto Rico)	779
Brooklyn (New York)	86
Port Isabel (Texas)	<u>11</u>

Subtotal	<u>2,082</u>
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Bureau of Prisons Facilities

New York (New York)	3
Otisville (New York)	120
Ray Brook (New York)	40
Morgantown (West Virginia)	49
Big Springs (Texas)	10
LaTuna (Texas)	87
Lexington (Kentucky)	182
Miami (Florida)	<u>13</u>

Subtotal	<u>504</u>
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Other Facilities

Local jails (Leesburg, Florida; New Orleans, Louisiana)	60
Golden Door (Lutheran) (Miami, Florida)	56
Red Shield (Salvation Army) (Miami, Florida)	20
Miami Hospital	<u>17</u>

Subtotal	<u>153</u>
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TOTAL	<u><u>2,739</u></u>
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Note: Between July 16, 1981, and July 9, 1982, the Office of Refugee Resettlement transferred approximately 166 Haitian minors to Greer Woodycrest Child Care Institution in Millbrook, New York.



U.S. Department of Justice

 Washington, D.C. 20530

April 29, 1983

Mr. William J. Anderson
 Director
 General Government Division
 United States General Accounting Office
 Washington, D.C. 20548

Dear Mr. Anderson:

This letter is in response to your request to the Attorney General for the comments of the Department of Justice (Department) on your draft report entitled "Detention by INS of Undocumented Haitian Nationals."

The Department is providing a number of comments which we believe should be incorporated into the report to improve or update the text of certain statements and correct certain inaccuracies noted.

<u>Page</u>	<u>Paragraph</u>	<u>Line</u>	
i	1	4-7	No aliens are summarily returned to their homeland. All persons are entitled to a hearing if the Immigration and Naturalization Service (INS) determines they are not eligible to enter the United States. After notification of ineligibility to enter the United States, inadmissible aliens are allowed to withdraw their applications for admission, or they may request an exclusion hearing before an immigration judge. In addition, it would be more accurate to state that these excludable aliens "did not have immigration documentation or work authorization, and are voluntarily returned to their homeland."
i	2	2-5	This is not a true statement. Excludable aliens as a whole have not been generally paroled into the United States and authorized to work while awaiting a decision on their claims. Detention policy guidelines in exclusion cases are reiterated in INS Memorandum CO 242.4-P of April 16, 1982. Under section 235(b) of the Immigration and Nationality Act, detention is mandated.
ii	1	1	The phrase "--excludable aliens--" should be added after United States to better identify the population being discussed.

<u>Page</u>	<u>Paragraph</u>	<u>Line</u>	
ii	2	2	Again, the phrase "excludable aliens" in lieu of "these aliens" would better identify the population being discussed.
ii	2	4-6	It would be more to the point to state: "The guidelines governing excludable aliens allow grants of parole only for emergency or humanitarian reasons, . . ."
ii	3	4-6	This sentence is misleading since litigation resulted in <u>temporary</u> suspension of exclusion hearings.
ii	5	9-10	This phrase should read: ". . . detain, rather than parole excludable aliens, was illegal."
iii	5	8-9	Conditions were crowded, but aliens were provided with basic amenities and services.
iv	4	3-5	GAO's conclusion should recognize a third choice before INS--that of finding new ways to expedite processing excludable aliens' claims.
1	1	5-9	No aliens are summarily returned to their homeland. This sentence should read: "Some excludable aliens entering illegally acknowledge to INS that they came to the U.S. to work, and voluntarily return to their homeland because their presence in the U.S. without immigration or work authorization documents is illegal." All persons are entitled to a hearing if INS determines they are not eligible to enter the United States. After notification of ineligibility to enter the United States, inadmissible aliens are allowed to withdraw their applications for admission, or they may request an exclusion hearing before an immigration judge.
2	1	8-9	The sentence does not state as of what date the 1,725 Haitians were repatriated. This figure changes over time.
3	2	1-3	This sentence should specify that U.S. immigration laws do not authorize <u>undocumented</u> aliens to enter the United States for purposes of escaping economic deprivation in their homelands.
3	2	4-8	This text should be revised to read: "Aliens escaping economic deprivation may apply for appropriate documentation such as an immigrant visa within the numerical limitations on lawful admissions contained in the Act. The categories of preference priorities contained in the Act for allocating immigrant visas are based primarily on familial relationships or needed skills or professions."

<u>Page</u>	<u>Paragraph</u>	<u>Line</u>	
5	1	1-5	This is not a true statement. Excludable aliens as a whole have not been generally paroled into the United States and authorized to work while awaiting a decision on their claims.
5	1	6-9	This text should be revised and expanded as follows to more accurately and fully explain the Administration's detention policy with regard to excludable aliens: "However, the Administration, noting that the statute required detention, concluded that allowing excludable aliens to work pending a decision on their right to enter the United States had prevented effective immigration processing under the law since the vast majority of individuals absconded and never showed up for hearings. Detention was instituted to ensure that individuals no longer avoid the legal processing by disappearing into the community."
5	2	4-8	The Haitians were not a small part of the total migration. The Haitians were, by a large majority, the principal group by nationality found at arrival to be inadmissible to the United States during this time period. This paragraph is misleading.
6	2	5-9	This is an incorrect statement. See comment to page 5, paragraph 1, lines 6-9.
6	2		Insert after the first sentence of the second full paragraph: "During this time INS released 765 aliens on humanitarian parole pursuant to detention policy guidelines."
6	3	1-4	The text should be revised to read: ". . . the number of Haitians detained at any one time rose to a high of 2,700 before approximately 1,700 were released by court order issued in June 1982."
7	1		The text should be revised to read: "--exclusion hearings were suspended altogether for detainees without attorneys by the court for a period of approximately six and onehalf months until the inception of the Dade County Bar Association Pro Bono Program."
9	3		This paragraph should be revised as follows to more fully and fairly describe the delays in deciding the asylum claims: "The INS Commissioner ordered exclusion hearings for Haitians resumed in January 1981, while paroles were still being granted. The backlog of Haitian exclusion cases dating to 1977, the revised process that involved hearings by immigration judges with the right to appeal, and the number of aliens failing to appear for their exclusion hearings

Page Paragraph Line

all contributed to the fact that the backlog was unable to be completed prior to the decision to detain new arrivals. While INS firmly believed that this exclusion hearing process would proceed in an expeditious manner, the Commissioner, in April of 1981, ordered that the proceedings for Haitians in detention be scheduled before those who had been paroled. Increasing numbers of arriving excludable Haitians coupled with the exhaustion of appellate review levels included in the exclusion hearing process continued to pose procedural delays in the processing of asylum claims for these individuals."

- 10 3 This paragraph should be revised as follows to more fully and fairly describe the delays in deciding the asylum claims: "In Louis v. Meissner, 530 F. Supp. 924 (Southern District of Florida 1981), a class action was filed on behalf of Haitian aliens alleging that they were denied certain rights in their exclusion proceedings. This suit was filed, in part, in response to INS transferring Haitian aliens to detention facilities located outside the State of Florida. The massive influx of Haitians arriving on the shores of Southern Florida severely overburdened the ability of INS to detain all of these individuals at the Krome North facility. In order to provide adequate facilities for these individuals and insure their safety and proper sanitary conditions, INS transferred individuals to facilities outside of Florida. The court concluded, however, that INS had transferred these individuals to locations without adequate attorneys available to represent them who were experienced in immigration law. The court further concluded that the areas in which the Haitian aliens were transferred lacked sufficient Creole-speaking individuals able to act as translators. The court compared these detention locations to the area of Southern Florida, where the Haitian arrivals entered the United States, and where the court believed attorneys and Creole-speaking translators were available. In addition, the court issued a preliminary injunction on September 30, 1981, restricting INS from holding exclusion proceedings for, or deporting, any Haitian aliens in the class who arrived in the Southern District of Florida (a Federal court district) after May 20, 1981, and who were held in detention at certain INS detention facilities pending exclusion proceedings."
- 12 2 5-8 The sentence should be revised as follows to provide more current information: "In order to implement the policy, INS plans to increase its present detention capacity, and, in addition, plans to prepare the new permanent facility to accommodate detainees whose cases require longer processing time."

<u>Page</u>	<u>Paragraph</u>	<u>Line</u>	
12	3		The following text should be added at the end of the paragraph to reflect INS views and provide updated information: "This injunction remains intact to date, more than 300 days since the final order, although INS has made a formal motion before the court for its dissolution. At this juncture, a significant number of the class members are still unrepresented by counsel and thus are unable to be scheduled for exclusion hearings. While <u>pro bono</u> attorneys have offered renewed assistance to this program, INS maintains that the geographic distribution of the individuals throughout the United States will make this representation effort a difficult task."
13	3	1-4	The text should be revised to read: ". . . in November 1977 for Haitians when the INS Commissioner ordered the general release of Haitians in detention without bond while exclusion proceedings had been suspended due to litigation to allow INS"
16	1	9	Conditions were crowded, but aliens were provided with basic amenities and services.
18	1		The following statement should be inserted after the last of the listed deficiencies: "Beginning in February 1982 the following substantial improvements were made at the facility: installation of a soccer field and a volleyball field; upgrading of a softball field; and establishment of a recreational staff and recreational program. Continuing and effective improvements were made at the Krome North facility in order to deal with the unexpected longer term population there."
19 20	5 2	4-7 6	In the discussion on mental health, both the U.S. Public Health Service (USPHS) and the Haitian Red Cross attributed mental health problems of the Haitians to the uncertain length of detention with no definite date set for release. The Haitian Red Cross even concluded that improved detention conditions would not resolve these problems, yet GAO concludes that USPHS could not effectively deal with mental health problems because of the conditions under which the detainees were held.
20	1	1-3	The following sentence should replace the first two sentences to reflect more current information: "Pursuant to INS' request, Congress has provided funds for an additional permanent 1,000 bed alien detention facility."

20	1	7-8	\$35 million should be revised to read \$17 million and \$17,500 should be revised to read \$17,000.
21	2	1-2	This statement is misleading. Instead: "Because of overcrowding at Krome North, INS was continuously seeking additional suitable sites for detention."
23	3	1-2	To more accurately and fairly reflect INS efforts, substitute: "A continuous review of available Government properties was conducted in order to identify additional detention space. INS conducted another formal survey of possible detention sites in June 1981."
24	2	5	This phrase should read: "--the policy of detaining all new undocumented arrivals"
24	3	8-9	This statement is incorrect. It should read: "--Fort Allen was strategically located away from high density population areas and enroute to Haiti,"
25	4	3-4	This sentence is misleading. Substitute: ". . . the INS Commissioner directed that the selection team extend the search beyond Ellington." (N.B. It was essentially the same selection team.)
26	2	4-7	This statement is misleading. Several other pertinent factors were involved in the decision.
26	2		Delete the last sentence since it is out of date, and add: "After considerable additional study and review of the attributes of Oakdale and El Reno, the Attorney General announced on February 11, 1983 that Oakdale had been selected for the construction of the 1,000 bed facility for reasons of community support, beneficial effect on a high unemployment area, and favorable climate. (The capacity was reduced from 2,000 beds in the Congressional budget process.)"
26	3	7	2,000 should be changed to read 1,000.

Also, the discussion of Louis v. Nelson, No. 81-1260-CIV-EPS (U.S.D.C.S.D. Fla.) on pages 11 and 12 of the report should be revised to include three additional legal issues. The court held that:


1. INS did not discriminate in its application of the detention policy and said the policy was applied to all nationalities attempting to illegally enter the United States.
2. The legality of detention itself was an issue to be decided on another day.

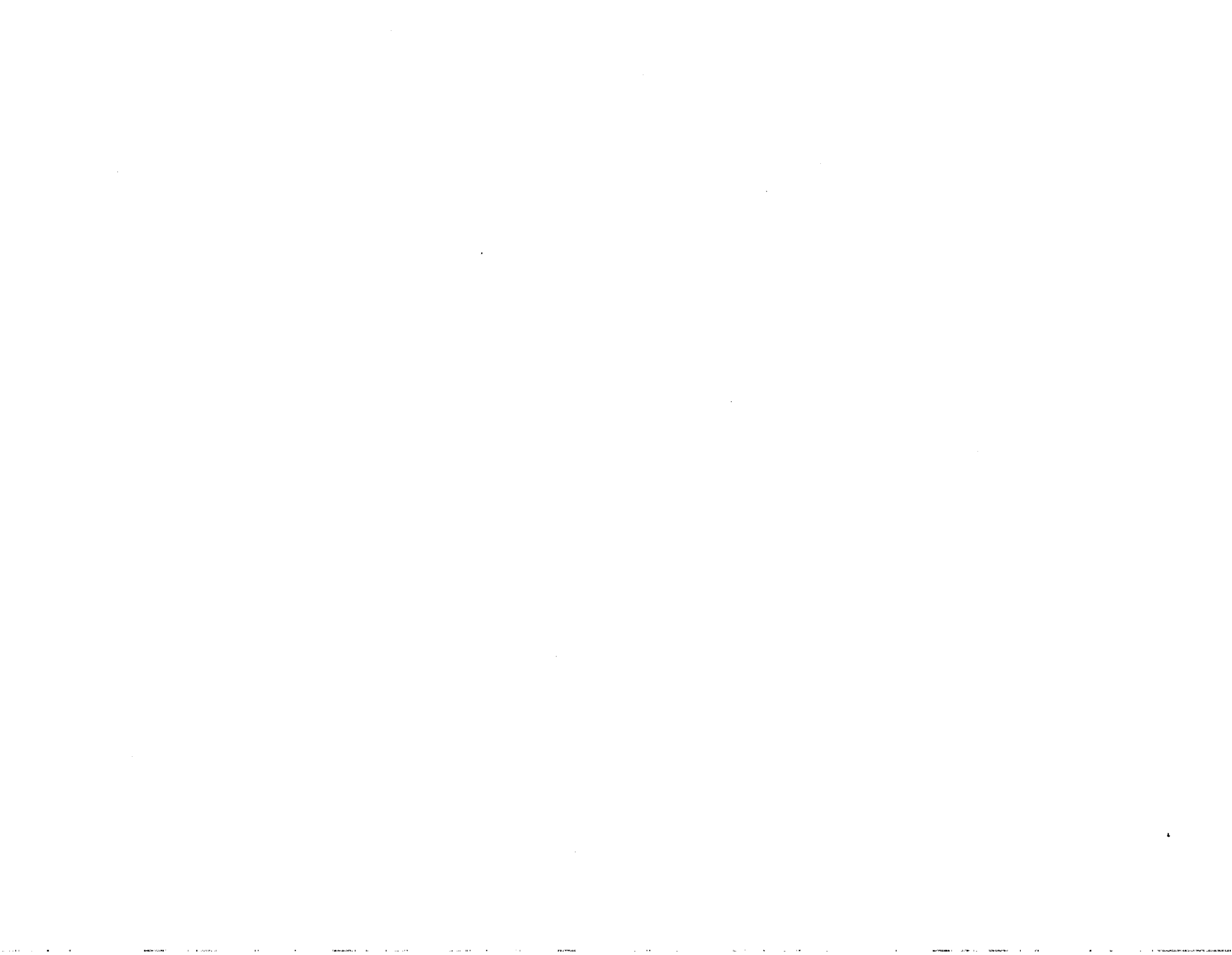
3. INS' detention policy was adopted "without observance of the procedures required by law," meaning that INS had not published the policy in the Federal Register. INS has appealed, and without compromising its position has promulgated detention regulations pursuant to the requirements of the Administrative Procedures Act.

Reference is made in the body of the report to Bureau of Prisons' confinement costs. The costs given the General Accounting Office for use in the report are based upon a per capita average; costs at certain facilities are higher than at others. Consequently, any reference to Bureau of Prisons' confinement costs should include this disclaimer.

We appreciate the opportunity to provide our comments and suggestions and hope they will be useful in finalizing the report. Should you desire to discuss further any of the matters presented in our response, please feel free to contact me.

Sincerely,


Kevin D. Rooney
Assistant Attorney General
for Administration



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