

EXECUTIVE SECRETARIAT
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Executive Secretary

8/21/83

Date

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UNITED STATES COORDINATOR
FOR REFUGEE AFFAIRS
WASHINGTON, D.C. 20520

83-4197/1

August 29, 1983

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MEMORANDUM FOR THE SENIOR INTERAGENCY GROUP/REFUGEES

FROM : H. Eugene Douglas *[Signature]*

SUBJECT: Agenda Item: September 1 Meeting -- Admission
to the United States of Persons Amnestied by the
Government of El Salvador

ISSUE FOR DECISION

Whether to admit some of the beneficiaries of the amnesty program in El Salvador into the United States (1) through the Attorney General's parole authority or, (2) processing members of the group in San Salvador for refugee admission under the authority of the Refugee Act of 1980.

ESSENTIAL FACTORS

With strong USG backing, the Government of El Salvador launched a comprehensive amnesty program on May 16. The persons in question are those who have been imprisoned pursuant to Decree 507 (the State of Emergency), as well as some former guerrillas and guerrilla camp followers who have turned themselves in under the amnesty that was in effect from May 16 - August 15.

President Magana and Dr. Ernesto Arbizu Mata, President of the Amnesty Board of the Government of El Salvador, have repeatedly asked the United States and other Western countries to resettle those amnestied prisoners whose lives might be in danger in El Salvador.

Under Decree 507, special military tribunals were established to prosecute persons accused of treason, espionage, rebellion and sedition, and other offenses against the peace and independence of the state. The decree also rescinded certain civil liberties and due process. The special military tribunals acted in secret and often allowed detention of persons on the basis of anonymous denunciations.

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Many of the Decree 507 detainees may have engaged in no act of violence against persons or property. Their release can be seen as tacit acknowledgement by the Government that there is little derogatory information about them. Even so, some Salvadoran elements believe them to be politically threatening and could subject them to danger. There has been no report of violence towards any of the detainees released after the formal amnesty started on May 16. However, two bodies which were found on July 11 may be those of amnestied ex-prisoners. About five hundred forty Decree 507 detainees have been released.

The Belgian, French and Swedish Governments have said that they will consider individual applications, without specifying how many individuals they will resettle. Canada has agreed to take two hundred amnestied prisoners, plus family members. Australia has agreed to take fifty amnestied prisoners, plus family members. Both Canada and Australia are already well along in screening and accepting the detainees and arranging transportation for them. Canada and Australia have accepted the Salvadorans under their special humanitarian programs, not as official refugees.

There are two means for responding to the Government of El Salvador's (GOES) request that the U.S. accept a number of amnestied Salvadorans. The first -- use of the Attorney General's authority to parole into the U.S. aliens seeking admission -- would permit a designated group to be brought in without prior, individual determinations with respect to their refugee, immigrant, or other status (although we would still need to make individual determination that they were not otherwise excludable). The second -- processing members of the group in San Salvador for refugee admission -- would require a prior determination by the INS as to the refugee status of each individual.

Parole. Parole does not constitute "admission" for immigration purposes. Hence, parolees have no immigration status once here, but may apply to regularize their status. Parole may not be used for refugees unless the Attorney General determines that to do so would be "in the compelling public interest."

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Use of parole would avoid a delay in bringing the Salvadorans to the U.S. pending status determination. It could be justified (as required by statute) as "in the compelling public interest" on the grounds that the GOES has requested our immediate assistance, that other countries already have responded to this humanitarian appeal, and that the special circumstances surrounding the amnestees distinguish them from the general civilian population. On the other hand, permitting this group to enter and remain in the U.S. without legalizing their status could be challenged as inconsistent with the recent determination not to grant extended voluntary departure (EVD) to Salvadorans illegally present in the U.S. and could complicate our posture in pending litigation. (We could, however, distinguish this group from those in the U.S. who fear generalized violence, as stated above.) In addition, those entering would, at least initially, have no immigration status and would not be eligible for Federal refugee benefits, thus placing a burden on state and local authorities. Third, parole would only defer determinations as to refugee status, i.e., persecution, since most parolees are likely to apply for asylum once in the U.S.

Refugee Admission: At the outset, each individual would have to establish that he had been persecuted or had a well-founded fear of persecution. Refugee status might be justified on the grounds that the GOES has advised us that amnestied individuals are likely targets of elements in the society on account of their alleged or inferred political affiliation and that the Government is currently unable to provide what it considers to be adequate protection.

Use of refugee admission would appear more consistent with the position taken with respect to EVD for Salvadorans (and the related, pending litigation). Also, it would resolve status questions at the outset, thus entitling those admitted to benefits under the Refugee Act of 1980. On the down side, the option could be misinterpreted as an admission by us that the GOES treatment of amnestied individuals constituted persecution. It would also form a concrete and highly visible application of the concept that a government's inability to protect a class of persons from violent elements in the society is sufficient to establish refugee status, thus creating pressures for similar treatment of other groups worldwide.

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The Intergovernmental Committee for Migration (ICM) responded to an official request by the Government of El Salvador to assist the countries involved in this resettlement operation. Because of our own satisfactory experience with this agency, we believe that we should make use of ICM to assist us in prescreening those persons to be admitted to the United States. In particular, we would want ICM to weed out prospective applicants who have engaged in violence against persons or property.

ADMISSIONS MAY AROUSE CONTROVERSY

Accepting the amnestied Salvadorans is not without potential pitfalls and will be controversial. Supporters as well as critics of our Central American policy could question our decision. Conservatives may object because some of those coming here may be vocal opponents of the Salvadoran Government and our support for it. They may also argue that there are Salvadorans more deserving of being brought to the United States than these people. Liberals may criticize us because no matter how many we accept the numbers are insufficient. Moreover, this program may be used by Administration opponents as evidence that even the Salvadoran and American Governments recognize that conditions in El Salvador are such that no one should be returned.

RECOMMENDATION

The Department of State, the Department of Justice, and my office believe the United States should respond favorably to the Salvadoran request to assist persons released from detention. We recommend admission of a limited number through the procedures of the refugee program. A reasonable total admissions level would be probably no more than two hundred people, including family members. This is necessarily an arbitrary number, but it seems reasonable for the United States given the huge number of Salvadoran illegal aliens present here. Whether we accept any more in the future will depend upon whether this program is successful, the nature of U.S. domestic reaction, events in El Salvador, and the treatment received by amnestied prisoners who remain in El Salvador.

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In any case, we believe we should respond to the Salvadoran Government's appeal for assistance and join with other Western governments in offering it. Representatives of the Administration will, of course, confer with appropriate members of Congress and their staff. We would like your concurrence to proceed with a program to admit up to two hundred Salvadorans under the Attorney General's parole authority.

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