

DETAINING CUBANS EXACTS RISING TOLL

The New York Times

March 10, 1986, Monday, Late City Final Edition

Copyright 1986 The New York Times Company

Section: Section A; Page 1, Column 1; National Desk

Length: 1510 words

Byline: By WILLIAM E. SCHMIDT, Special to the New York Times

Dateline: ATLANTA, March 8

Body

The increasing number of **Cubans** imprisoned indefinitely by United States immigration officials to await deportation is **exacting** a growing **toll** on the Government and on the prisoners.

At the Federal penitentiary in Atlanta, where 1,860 of these **Cubans** are held, overcrowding and violence are so severe that a Congressman who oversees Federal prisons said that the **Cubans** were being kept "like animals in cages."

Because the Federal Bureau of Prisons has no more room for **Cubans** in the Atlanta prison, the Immigration and Naturalization Service has had to scramble to find space for another 700 in other jails and prisons, and officials say the cost is **rising** steadily.

The imprisoned **Cubans** were among more than 125,000 who arrived in Florida in 1980 from the Cuban fishing port of Mariel. A group of dangerous criminals and mentally incompetent people were ruled ineligible for immigration and **detained** when they arrived, and others have since been convicted of violating American laws. They are being held pending deportation, but Cuba refuses to take them back.

The situation facing immigration officials has worsened since last May, when Fidel Castro, the Cuban leader, abruptly canceled a five-month-old agreement to take back more than 2,700 of the men. Mr. Castro said he was protesting the Reagan Administration's decision to begin beaming into Cuba propaganda broadcasts from a new Government radio service, Radio Marti.

At that time only 201 men had been returned to Havana under the agreement, which also sought to normalize immigration from Cuba to the United States.

Most of the other Mariel emigres have adjusted peaceably to American society, but those who have been arrested across the country for crimes or violations of immigration laws are being added at the rate of 80 a month to swollen Federal **detention** rolls.

Since they rioted 16 months ago in the Atlanta penitentiary, which has been turned over almost entirely to the **detention** of **Cubans**, most of the **Cubans** there have been locked for 23 hours a day in cells that hold up to eight inmates each.

Representative Robert W. Kastenmeier, who toured the maximum-security prison last month, said in an interview that the "intolerable" conditions were putting severe stress on inmates and staff.

DETAINING CUBANS EXACTS RISING TOLL

"There are tensions that don't exist in any other Federal prison," said Mr. Kastenmeier, the Wisconsin Democrat who is chairman of the House Judiciary Subcommittee on Courts, Civil Liberties and the Administration of Justice. "To maintain people in conditions like these is beneath us as a society."

Violence in Atlanta Prison

According to reports furnished to Mr. Kastenmeier, there have been nine homicides, seven suicides, 400 serious but unsuccessful suicide attempts and more than 2,000 serious incidents of self-mutilation since 1981 among Cubans detained in the prison.

Prison officials say the nature of the imprisoned men, rather than the conditions of their imprisonment, is responsible for the violence.

Although Mr. Castro has denied it, United States officials say the Cuban leader emptied jails and mental hospitals of inmates, and added them to the exodus from Mariel.

About 5,000 of the Marielitos are in Federal, state or local jails, convicted of criminal offenses or immigration law violations that make them subject to expulsion as "excludable aliens." This includes 300 to 400 who were deemed excludable when they arrived and have been held for six years.

A Legal Limbo

The refusal by the Cuban Government to accept these people has left them in a legal limbo, since immigration authorities cannot send them back to Cuba and, with few exceptions, the Government is not willing to release them because it says they represent a threat to American society.

The increasing number of Marielitos in Federal custody has put a financial strain on the Government. The Bureau of Prisons says it costs more than \$25 million a year to keep the 1,860 Cubans in the Atlanta penitentiary, and an average of \$55 a day each for Cubans held in other jails. Some Congressional sources believe the cost in the Atlanta prison alone may be more than \$40 million.

Since last May, 700 Mariel Cubans have been added to Federal rolls for deportation and have had to be put in other Federal detention facilities and local jails.

Hugh Brien, the immigration agency's assistant commissioner for detention and deportation, said the number of new detainees will climb to 1,200 by this fall, costing taxpayers an additional \$7.5 million for the year. "It causes problems for us, because we have limited detention space in our own facilities," he said.

There are about 2,500 Mariel Cubans now being held across the country on state and local charges. When such men finish serving their sentences in state and local jails for criminal convictions or other acts that violate the strict terms of their admission to the country, they are being taken into indefinite Federal custody.

To help relieve the pressure on the system, Mr. Brien said that about 225 of the Cubans in custody have been screened by agency officials and released to halfway houses over the last six months. At most, he said the Government would send 400 to 500 Cubans to halfway houses this year, and fewer next year.

Cubans' Fate Hotly Debated

Over the last five years the issue of the Cubans' freedom has been hotly debated in the Federal courts.

Federal District Judge Marvin H. Shoob of Atlanta has ruled on several occasions that because President Carter "invited" the Cubans, most have some constitutional rights and should be entitled to individual hearings.

DETAINING CUBANS EXACTS RISING TOLL

But Federal appellate courts have generally reversed him, ruling that the detainees have no constitutional rights and upholding the Government's broad authority to detain them indefinitely pending expulsion.

As a three-judge panel of the United States Court of Appeals for the 11th Circuit was hearing arguments here last year, Robert S. Vance, the presiding judge, told a lawyer for the Cubans that "the Government can keep them in the Atlanta pen until they die."

Jurors 'Ashamed' of Policy

But last month the jurors in a criminal case against two of the Cubans accused of inciting riots in the prison in November 1984 acquitted the men, and after the trial issued sharp public statements saying that they were embarrassed by the Government's policy toward many of the Cubans in the prison.

One juror, Mel Magidson, an insurance salesman from suburban Atlanta, said the jurors "were somewhat ashamed of our Government and the ways things are going for these people."

Prison officials say that although the Cubans in Atlanta make up barely 5 percent of the total number of inmates in the Federal prison population nationwide, they account for more than half the reported inmate-to-inmate assaults, and at least one-third of all the assaults by inmates on guards.

"This is a pretty violent bunch of people," said Duke Austin, a spokesman for the immigration service. "That's why we'd rather keep them there."

The decision by prison authorities to keep more than 1,000 of the inmates confined to their cells to preserve discipline is one of several issues being challenged in another suit in Federal court, said Gary Leshaw, a lawyer here who has argued that the prison is overcrowded and badly staffed.

Arguments for Release

Except for the 300 to 400 who were taken into custody as undesirable aliens when they arrived in Florida in 1980, the 1,860 Cubans in the Atlanta penitentiary are men who ran afoul of the law after their arrival and have had their paroles revoked for what Judge Shoob has described as "offenses ranging from relatively minor infractions to serious crimes."

Attorneys working in behalf of the Cubans argue that while some of those in the Atlanta prison are dangerous criminals who ought not to go free, others pose no serious threat and some have families in the United States.

"What is most unfair is that men who have served their time for state offenses are now sitting in the Atlanta penitentiary with no hope of release except a return to Cuba," said Dale Schwartz, an Atlanta lawyer. Mr. Schwartz has also argued that detainees returned to Cuba could face persecution and torture.

Julius Debro, a professor at Atlanta University who helped run a halfway house for Cubans that was recently closed by the Government, said he believed that at least a quarter of the inmates in the Atlanta prison could be let out under supervision.

He said those who remain in custody tend to be able to speak little or no English and have an eighth-grade education or less. They are typically in their 20's, he said, and dark skinned.

Representative Kastenmeier said he would urge the Reagan Administration to shut down Radio Marti and reopen negotiations with Mr. Castro for the return to Cuba of as many of the undesirable aliens as possible.

A State Department official says the Castro Government has refused several entreaties to reinstate the immigration accord.

Classification

Language: ENGLISH

Subject: IMMIGRATION (92%); CORRECTIONS (91%); PRISONS (91%); DEPORTATION (90%); IMMIGRATION LAW (90%); JAIL SENTENCING (90%); PRISONERS (89%); CORRECTIONS WORKERS (78%); US FEDERAL GOVERNMENT (78%); CRIMINAL CONVICTIONS (78%); ARRESTS (78%); LEGISLATIVE BODIES (78%); AGREEMENTS (78%); IMMIGRANT **DETENTION** CENTERS (78%); EMIGRATION (78%); INTERVIEWS (77%); SUICIDE (77%); RIOTS (73%); ILLEGAL IMMIGRANTS (73%); CRIMINAL OFFENSES (73%); US DEMOCRATIC PARTY (73%); HOMICIDE (68%)

Company: IMMIGRATION AND NATURALIZATION SERVICE (US) US DEPARTMENT OF JUSTICE FEDERAL BUREAU OF PRISONS (57%); RADIO MARTI (54%)

Organization: US DEPARTMENT OF JUSTICE FEDERAL BUREAU OF PRISONS (57%); RADIO MARTI (54%); IMMIGRATION AND NATURALIZATION SERVICE (US) US DEPARTMENT OF JUSTICE FEDERAL BUREAU OF PRISONS (57%); RADIO MARTI (54%)

Industry: RADIO BROADCAST INDUSTRY (70%)

Person: FIDEL CASTRO (58%)

Geographic: HAVANA, CUBA (79%); FLORIDA, USA (79%); CUBA (94%); UNITED STATES (94%)