

June 8, 1993

**DRAFT**

MEMORANDUM TO: Phyllis Coven  
Assistant to the Attorney General

FROM: Gerald S. Murwitz  
Counsel to the Director  
Executive Office for Immigration Review

SUBJECT: EOIR's plan to adjudicate Chinese detained  
cases in New York, Baltimore, and Arlington

INTRODUCTION

Pursuant to your request, EOIR has formulated a plan to deal with the influx of the large group of detained Chinese nationals who are being housed at various locations in New York, Pennsylvania, and Virginia. These individuals number approximately 280, will be having their hearings with the Offices of the Immigration Judges at Varick Street, New York, Baltimore, Maryland, and Arlington, Virginia, at our offices, telephonically, or for some Individual Calendars possibly at detail locations.

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GOAL

The goal of the plan is to complete Immigration Judge (IJ) and, if necessary, Board of Immigration Appeals (BIA) proceedings within 120 days. This plan is based upon by holding hearings as quickly as possible, while preserving full due process protections for the aliens involved.

IMMEDIATE STEPS

As part of our plan, we have taken the following immediate steps to assist in the expeditious and efficient handling of these cases.

1. All management officers and IJs in the affected cities have been notified of the expected influx of cases and have been requested to handle these matters as expeditiously as possible while preserving due process protections.

2. Our offices will track all individuals in this group of cases with our automated case tracking system so that accurate, current information on these cases can be ascertained at any time.

3. We have conferred with Berlitz Corp., our contractor for interpreters, and provided them with a request for additional Chinese interpreters in the affected locations in the appropriate dialects.

4. We are detailing additional IJs, as necessary, to the affected cities to assist in the immediate handling of these cases.

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5. Management officers have been instructed to identify appropriate spaces, such as borrowed courtrooms, conference rooms, or other facilities in which to hold some individual calendar hearings. These will be at or near the places where the aliens are being held. We also anticipate holding Individual Calendar hearings at our base offices to fully utilize our resources, and to most quickly adjudicate these cases.

6. We have instructed our management officers to use overnight mail for all transmissions of files and tapes to the Board or to our transcription contractor to save time.

7. We have instructed our transcription contractor to handle these cases as the highest priority in the shortest completion times for transcripts possible. We are also instructing our management officers to begin processing tapes of our hearings for transcription at the time a party reserves appeal. This will save up to ten days processing time, since the party has ten days in which to file a notice of appeal.

8. We have set up additional Master Calendars for these detained cases as they are received in our offices to accommodate them immediately.

#### ADDITIONAL RESOURCES

We will be using IJs at Varick Street, New York, Baltimore MD, and Arlington, VA. We currently have three IJs at each location for a total of 9. We are prepared to increase the number of IJs for the duration of the adjudication of these

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cases up to the amount that the case load and available space dictates. We will be bringing IJs in from different parts of the country with an eye toward detailing those IJs from cities with lighter case loads.

We are also increasing the number of Chinese interpreters to be made available in the affected cities at the Master Calendars. This will help to assure the smooth and adequate flow of cases without continuances for interpreters.

#### STEP OF THE PROCESS

The following is an outline of our process for these hearings. We have included estimated time frames based in part on our past experiences with detained cases and also based on the additional steps that we are taking to further expedite these matters. It should be noted that although expeditious handling of these cases is extremely important, we will do nothing to undercut due process safeguards and every alien will have a full and fair opportunity to present their case to the IJ and if necessary to the Board. We will pay particular attention to time savings in administrative areas, such as preparation of transcripts, transmission of files and tapes, immediate scheduling of initial proceedings and transmission of applications for review by the State Department to save time in all these areas. IJs, as they do with detained cases generally, will expedite these matters as much as possible, but will be careful to protect the integrity and fairness of the

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STEP-BY-STEP OUTLINE OF OUR PLANNED CASE PROCESSING

At the outset, it should be noted that for illustrative purposes, we are setting out the steps of a typical exclusion case with an application for asylum being the major issue in the case. There may be many variations in these proceedings, as other issues are raised. Also, note that the time frames are indicated in working days.

A. The charging document is filed with the OIJ. The case is scheduled immediately upon receipt. The time between receipt and the first hearing is approximately 5 days.

B. First Master Calendar hearing is held. The alien is advised of the nature and purpose of the proceeding and is given an opportunity to seek counsel. Due process requires a reasonable amount of time to secure counsel. We estimate 10 days.

C. Next Master Calendar hearing. Alien, with counsel present, has an opportunity to raise any issue to respond to the charges and will, if requested, be given an opportunity to apply for relief from exclusion. Usually, that relief will be asylum. We estimate that the amount of time given to submit an application will generally be 10 days.

D. Asylum application is filed by the alien. The State Department letter is requested and a State Department letter is returned to the IJ. We estimate 5 days.

E. The merits hearing is scheduled, held, and completed. This is the hearing at which the asylum claim is heard, and in

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most cases, an oral decision is rendered. We estimate that given volume and complexity of these cases and additional resources that we will include, these cases will be completed in approximately 15 days.

F. In those cases in which the alien is not granted asylum or is otherwise unsuccessful, an appeal may be taken to the BIA. In these cases, we estimate that for the preparation of the transcript and the filing of the briefs, 30 days is required. This breaks down 10 days for the transcript, 10 days for the brief, and 10 days for the reply brief. We will be expediting the process of the transcript at the date of the decision in an effort to cut down on the total number of processing days, since an alien has 10 days to decide whether or not to appeal.

G. Consideration by the BIA. This process, which includes possible Oral Argument, review of briefs and the entire record, as well as a written decision, can be rather complex. We estimate that by handling this as a top priority, a case will generally take 30 days to complete.

It should be stressed that the above-referenced time lines constitute an estimate of a best case scenario in which everything runs smoothly. If matters become complicated by legal issues, administrative problems, unavailability of counsel, illness of the parties or other unforeseen circumstances, time frames could run longer. We will do everything possible consistent with due process to reach the above-referenced goal.

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ADDITIONAL COMMENTS AND SUGGESTIONS

1. As you are aware, the BIA has certified two cases to the Attorney General which involve significant issues relating to the adjudication of persecution claims, including issues involving PRC coerced family planning measures as a basis for establishing persecution. It would be helpful for the adjudication of these cases and other similar cases if the Attorney General quickly decides these issues.

2. It would also be helpful for the Attorney General, or the Associate Attorney General, in writing, to advise and direct that these cases are to be treated as emergency matters and that every thing must be done expeditiously to complete them consistent with due process. This will give both our IJs and the BIA additional authority in which to act in a most expeditious fashion. It will make clear the emergency nature of these proceedings in the event that they are attacked in court as being handled differently than other cases.

3. Although expeditious treatment of these cases is of crucial concern, due process and the rights of aliens must be protected. As I indicated in 1980, in a somewhat similar situation, the INS expedited Haitian asylum cases in exclusion proceedings in Miami. Every effort was made to complete these cases on an emergency basis. Law suits were filed and judicial review was utilized in these matters. Because of the Service's haste, it was determined by the courts that due process was violated and most of the cases were reversed. It will do us no good to repeat this exercise. The cases must be adjudicated

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with adequate care to assure that all rights of aliens will be protected throughout the proceedings.

4. I understand that there are a number of final orders of exclusion/deportation which have already resulted in earlier Chinese cases. It is my understanding that few, if any, of these individuals have actually been deported to China. This can be verified by INS. If the Department wishes to make an immediate impact on the situation, the Department may wish to consider executing these final orders of deportation. That is something that can be done immediately and will have a significant impact without waiting for the group of cases in question to be completed.

5. Judicial review. It should be noted that even with the expeditious completion of our administrative process, these aliens still have the right to judicial review which will probably be exercised in unsuccessful asylum cases. Since jurisdiction in these cases rests with the federal courts, the Department has no control over the pace of these cases and must expect additional detention time for that process to be completed. Also, since judicial review is available in every situation, where the alien has not prevailed, it is important that the hearings be handled in a careful manner so that they can withstand judicial scrutiny.

6. For these cases to go as smoothly as possible, we recommend where ever possible that they be heard in our regular based offices. This will allow us to exert the maximum amount of resources in the most efficient way. This is particularly critical in Master Calendar hearings where large numbers of people must be dealt with in a short time frame. We have to

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physical space, support staff, and necessary court rooms to handle those numbers in our offices. Telephonic hearings, although not as desirable or effective, are a possible alternative for Master Calendar. For individual hearings, some remote locations are feasible. However, to fully utilize our resources, we will have to use a combination of our court rooms in the base offices and remote locations.

7. Health Concerns. We emphasize that for the health of the aliens and for the health of the INS and EOIR personnel, that careful screening of the aliens be conducted, and that those with active TB or other diseases be treated immediately. These health concerns should be addressed without delay.

8. The implementation of this program will be of considerable cost to EOIR. Travel and interpreter costs will be significant. Also, from a program management standpoint, our regular case load will be adversely affected since we will have to cancel numerous scheduled cases to accommodate these matters. At the Board, adjudication of these appeals on an expedited basis may delay the adjudication of other priority matters, including other detained and criminal alien cases. We will try to minimize these disruptions as much as possible. You should be aware of the impact of this influx on our agency.

9. We estimate that, based on our plan and assuming timely filed charging documents, we will be able to begin Master Calendar hearings for individuals in this group on Monday of next week, and we estimate that we will be able to complete all initial Master Calendar hearings by the end of next week, June 18th. We will expend all resources necessary to continue this process in an efficient and effective manner.

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I trust that this outline of our program will be helpful to assist you and other Justice Department officials in understanding the manner in which we plan to adjudicate these cases.

If you have any questions, please contact me at 703/305-0470.

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