

State of New York  
Department of Correctional Services

Building Number 2  
Harriman Office Campus  
Albany, New York 12226

**THE MARIEL CUBAN  
REIMBURSEMENT PROGRAM**

142941

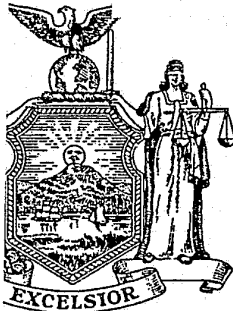
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STATE OF NEW YORK

142941

DEPARTMENT OF CORRECTIONAL SERVICES

THE STATE OFFICE BUILDING CAMPUS

ALBANY, N.Y. 12226

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THE MARIEL CUBAN REIMBURSEMENT PROGRAM

EXECUTIVE SUMMARY

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

The Mariel Cuban Reimbursement Program was established by the United States Congress in 1985 in recognition of the federal government's responsibility for costs incurred by states incarcerating individuals who would not normally have been allowed to enter American communities. While the states certainly welcomed this federal assistance, states are compensated for only a fraction of the actual costs of incarceration. Through 1991 in New York State, the average annual reimbursement received was approximately 10% of the actual costs incurred for incarcerating Mariel Cubans. However, for federal fiscal year 1992-93, the U.S. Department of Justice slashed the reimbursement in half. Therefore, while it is calculated that it will cost New York State \$11,126,250 to incarcerate Mariel Cuban inmates in 1993; the Department was able to secure only \$461,138 (or 4% of these costs).

APRIL 1993

## **THE MARIEL CUBAN REIMBURSEMENT PROGRAM**

### **ORIGINS OF THE PROGRAM**

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

The states of Florida and New York were hardest hit by the Mariel problem. In federal fiscal year 1992 there were 548 known Mariel Cubans incarcerated in Florida state prisons and there were 423 known Mariel Cubans serving time in New York State prisons. In contrast, the states of New Jersey and California had 173 and 155 known Mariel Cubans serving time in state prisons, respectively.

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

However, the annual reimbursement fund is allocated by the United States Department of Justice from discretionary funds within the agency's budget. Therefore, the actual amount of reimbursement allocated can vary from year to year.

From the program's inception until federal fiscal year 1992, the reimbursement fund was approximately \$5,000,000. In federal fiscal year 1993, the U.S. Department of Justice slashed the reimbursement fund in half to \$2,500,000.

### **APPLICATION PROCEDURES**

Each year states are invited to apply for reimbursement for incarcerating Mariel Cubans under the Mariel Cuban Reimbursement Program. The Program is administered by the Bureau of Justice Assistance (BJA), a branch of the United States Department of Justice. In 1992, thirty-eight states applied for reimbursement under this program.

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

Until federal fiscal year 1992, all applications contained a standard Application for Federal Assistance form and a certified listing of incarcerated Mariel Cuban inmates under custody. The certified listing separated inmates that had been verified in previous application years from inmates for whom reimbursement was being requested for the first time. (See Appendix A for a sample information sheet). This listing contained the following information for each Mariel Cuban for whom reimbursement was being requested and in the following sequence:

1. Name (last name first)
2. Alias (also known as)
3. Alien Identification Number Issued by the United States Immigration and Naturalization Service (INS)
4. Inmate Number (Issued by the State Prison System)
5. Date of Birth
6. Date of Incarceration
7. Probable Earliest Release Date
8. Conviction Offense (Written in Descriptive Form not referenced by the State Criminal Code)
9. Date of Conviction
10. Last known address of Mariel Cuban Inmate for Whom Reimbursement is Being Requested.
11. Name of the State Prison Facility Housing the Mariel Cuban Inmate for Whom Reimbursement is Being
12. Address of the State Prison Facility Housing The Mariel Cuban Inmate for Whom Reimbursement is Being requested

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

13. Federal Form I-247 (an immigration detainer notice) and a copy of the detainer on the prisoner if one has been filed by INS
14. A fingerprint card

In federal fiscal years 1992 and 1993, BJA changed the application procedure. In 1991, the Bureau mailed a questionnaire to state Departments of Correction regarding their access to personal computers and communications hardware.

The information obtained from the states regarding computer hardware led BJA to bifurcate the application process. States are now required to:

1. electronically transfer inmate data from state owned personal computers directly into BJA's computer, and
2. submit a hard copy (i.e., a certified copy) of the data electronically transferred into the BJA computer.

The hard copy contains the following information in the following sequence:

1. Name (Last Name First)
2. AKA (Also Known As)
3. Alien Identification Number
4. Inmate Number (Corrections Department I.D.)
5. Date of Birth
6. Date of Incarceration
7. Probable Earliest Release Date

Also, as in the past, the following information must be provided for Mariel Cuban inmates for whom reimbursement is being requested for the first time:

8. Federal Form I-247 (An Immigration Notice of Action Form) and a copy of the Detainer On the Prisoner if one has been filed by INS.
9. A Fingerprint Card

The certified listing (i.e. hard copy) must be signed by the Governor or the Governor's authorized representative. In New York State, the Commissioner of the Department of Correctional Services is the Governor's authorized representative. In addition, since New York State requests more than \$500,000 for a given reimbursement year, it must supply BJA, on an annual basis, with updated statistics on the racial/ethnic background of its employees to demonstrate its continued compliance with the previously submitted and approved Department Equal Opportunity Plan.

## IDENTIFICATION AND VERIFICATION OF MARIEL STATUS

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

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

Unlike many federally funded programs, the funds states receive for incarcerating Mariel Cubans are determined not by the number of Mariels incarcerated during the previous year, but by the number of months it projects Mariel prisoners will be incarcerated during the coming year. For example, for federal fiscal year 1992 - 1993 the application for reimbursement must be submitted to BJA by February 1, 1993. Reimbursement will be awarded to states for Mariels incarcerated between October 1, 1992 and September 30, 1993 (See Appendix B for an example of the reimbursement calculation method).

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

Although these indicators may suggest that an inmate may be a Mariel, only INS can verify an alien's status. Therefore, some inmates identified as possible Mariel Cubans may not be classified by INS as Mariels. The Department and the other involved states have no way to know this, however, until the application package is reviewed by BJA and the certified listing is cross-checked and verified by INS. Therefore, some inmates for whom

the Department requests reimbursement may not be classified as Mariel Cubans and reimbursement will not be provided for those inmates. However, because of the need to include prisoners for whom alien status information is not yet known, the aforementioned procedure ensures that the Department's Mariel application is as complete as possible. BJA's review of the applications must be completed no later than April 1 of the federal fiscal year and reimbursement funds are immediately made available to the applicants.

## LIMITATIONS OF THE REIMBURSEMENT PROGRAM

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

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

An additional problem with the current reimbursement scheme is that the annual appropriation remained constant at \$5,000,000 from the program's inception in 1985 until 1992. Then, in federal fiscal year 1992-1993 the U.S. Department of Justice slashed the reimbursement funding in half. However, the costs of incarceration have risen in New York State from \$24,100 in 1985 to approximately \$27,000 in 1993. Therefore, the proportion of operating costs for which reimbursement was actually received (i.e., the amount of reimbursement received to the estimated costs of incarcerating an individual) has decreased from 11 % in 1985 ( $\$905,669/\$8,220,040=11\%$ ) to 4 % in 1993 ( $\$461,138/\$11,126,250=4\%$ ).

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

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

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

The same holds true for the current \$2,500,000 reimbursement fund.

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

For reimbursement year 1989, the monthly reimbursement figure was derived by dividing \$5,000,000 by 24,603 which meant that each state was to be reimbursed \$203 for each month a Mariel Cuban was incarcerated. By comparison, the monthly reimbursement figure for federal fiscal year 1991 was derived by dividing \$4,963,000 (the full \$5,000,000 was not appropriated that year) by 26,559 producing a monthly reimbursement value of \$186.00. This meant that each state was paid less for each Mariel under custody in 1991 than it was paid in 1989 because the total amount of the fund (\$5,000,000) remained constant while the number of individuals it had to pay for and the number of months they were incarcerated both increased. Therefore, even if a state incarcerated more Mariels in 1991, it could conceivably have received less reimbursement money than it did in 1989 because it was being paid correspondingly less for each Mariel.

## CONCLUSION

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

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

In sum, since the program's inception in 1985, New York has received only partial compensation for financial expenditures directly related to the negligent actions of the federal government. However, although the U.S. Congress tacitly admitted federal guilt by creating the reimbursement program, the U.S. Department of Justice has argued from the program's inception that scarce Justice Department resources should not be used to reimburse the states.

The Justice Department argues that Mariels incarcerated in state prisons have violated state laws, not Federal laws and, therefore, are not the responsibility of the federal government.\* On the basis of this argument, the Justice Department has asked the Congress to eliminate the reimbursement program during every Congressional Budget Appropriations hearing since 1986.

This year, Congress partially acquiesced to the Justice Department's elimination request by cutting the appropriation in half. In response, the New York State Department of Correctional Services is advocating the restoration of the annual program appropriation to at least the \$5 million level maintained from 1985-1992, and possibly a higher level that more adequately reflects the federal government's acknowledged responsibility for these criminal aliens.

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\*This argument completely ignores the fact that Mariels could not have violated state penal laws and subsequently be incarcerated in state prisons if the federal government (specifically the U.S. Department of Justice) had performed its duties to control and guard the borders of the United States as mandated in Title 8 of the U.S. Code.

**APPENDIX A**



**FICTIONAL CASE FOR PURPOSES OF ILLUSTRATION****CERTIFIED LISTING****INMATE INFORMATION SHEET**

- |     |  |   |
|-----|--|---|
| 1.  | Inmate Name:                                 | Garcia, Jose                              |
| 2.  | AKA (Also known as):                         | Garcia-Sanchez, J.<br>Sands, Joseph       |
| 3.  | Alien Identification Number:                 | A73 733 899                               |
| 4.  | Inmate number:                               | 81 T 9999                                 |
| 5.  | Date of Birth:                               | April 21, 1954                            |
| 6.  | Incarceration Date:                          | February 5, 1981                          |
| 7.  | Probable Earliest Release Date:              | June 8, 1992                              |
| 8.  | Conviction Offense:                          | Murder 2nd<br>Robbery 1st<br>Assault 1st  |
| 9.  | Conviction Date:                             | January 4, 1981                           |
| 10. | Last Known Address:                          | 82 133th Street<br>New York, New York     |
| 11. | State Facility Housing Inmate:               | Attica                                    |
| 12. | State Facility Address:                      | Box 149<br>Attica, New York<br>14011-0149 |
| 13. | I-247 Form - Immigration<br>Detainer Notice: | Previously Submitted                      |
| 14. | Fingerprint Card:                            | Previously Submitted                      |

**APPENDIX B**

**METHOD FOR COMPUTING REIMBURSEMENT REQUEST  
FOR FEDERAL FISCAL YEAR 1992-93**

Total Number of Mariel Cubans 438

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

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

Part 1. Mariel Cubans Previously Certified  
by Department of Justice

Total number: 361

	<u>Number of cases</u>	<u>Reimbursement Per Case</u>		<u>Reimbursement Requested</u>
Number Under Custody for Entire Period	309	X 12,000	=	\$3,708,000
Number Under Custody for Portion of Period	52			
Number of Months of Incarceration for Persons Under Custody for a Portion of Period	361	X 1,000	=	\$ 361,000
		Subtotal	=	\$4,069,000

## Part 2. Mariel Cubans Not Previously Certified

Total Number: 77

	<u>Number of cases</u>	<u>Reimbursement Per Case</u>		<u>Reimbursement Requested</u>
Number Under Custody for Entire Period	66	X 12,000	=	\$ 792,000
Number Under Custody for Portion of Period	11			
Number of Months of Incarceration for Persons Under Custody for a Portion of Period	84	X 1,000	=	\$ 84,000
		Subtotal	=	\$ 876,000
<b>Total Reimbursement Request</b>				<b>\$4,945,000</b>

## **APPENDIX C**

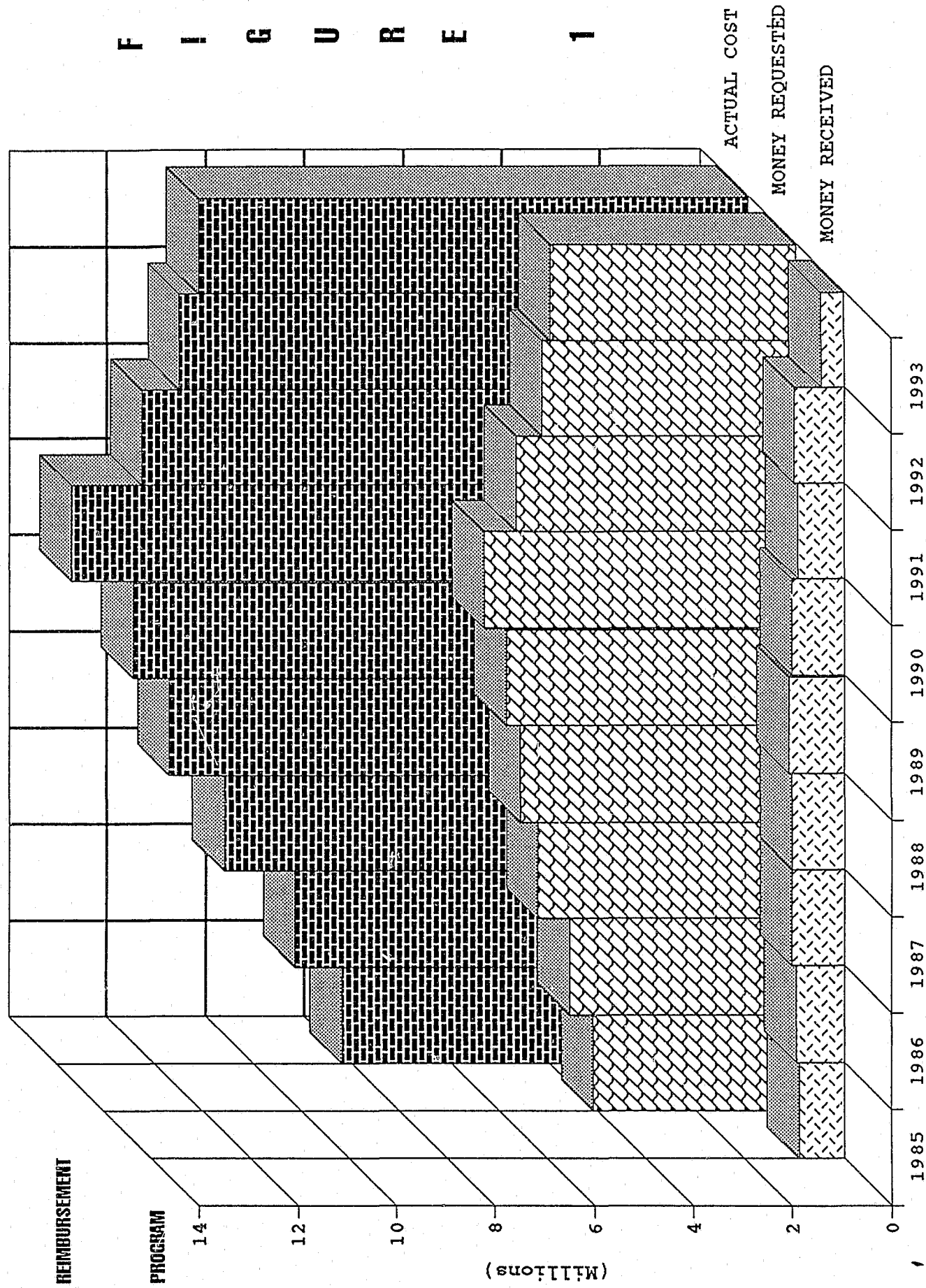
## MARIEL CUBAN REIMBURSEMENT PROGRAM

	REIMBURSEMENT YEAR								
	1985	1986	1987	1988	1989	1990	1991	1992	1993
Amount of Reimbursement received	\$905,669	\$ 944,773	\$1,036,794	\$1,035,258	\$1,085,814	\$1,045,653	\$ 929,717	\$ 970,094	\$ 461,138
Total amount of Reimbursement Requested	\$4,093,000	\$4,559,000	\$5,194,000	\$5,553,000	\$5,846,000	\$6,295,000	\$5,634,000	\$5,115,000	\$4,945,000
Estimated Cost of Housing Mariel Cuban Inmates	\$8,220,040	\$9,155,744	\$10,591,328	\$11,700,575	\$12,422,750	\$13,702,227	\$12,263,494	\$11,508,750	\$11,126,250

## APPENDIX D

AND RECEIVED REIMBURSEMENT

FIGURE 1





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