

BACKGROUND

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Why Strengthening U.S. Immigration Policy Toward Cuban Migrants Is in America's Interests

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Abstract

America's immigration policy toward Cuban nationals is in need of serious reform. Since the implementation of the Cuban Adjustment Act in 1966, the United States has afforded virtually all Cuban immigrants the presumption of well-founded fear as a means for qualifying for legal status and means-tested benefits in the U.S. Initially, this policy made sense, as there was a high degree of confidence that Cuban nationals arriving in the U.S. were escaping Cuba's communist revolution of 1959. While this well-intentioned and deliberate policy protected legitimate victims at the time of its implementation, the lack of standards for proving persecution has led to its exploitation. This policy has also inadvertently led to the growth of human-smuggling networks and rampant fraud by the welfare recipients. Policymakers must stop the abuses quickly in order to maintain the integrity of the law and the protection of truly persecuted Cubans.

As a presidential candidate, Donald Trump vowed to correct the mistakes of the Obama Administration. Central to his campaign was promising to fix the U.S.'s broken immigration system. One part of this laborious process is updating and strengthening U.S. policy toward Cuban nationals. Since 1966, the U.S. has maintained a policy of providing Cuban migrants preferential means to legal status. At the time, it was presumed that all Cubans fleeing the island had a well-founded fear of state-sponsored persecution. Since then, the Cuban government has barely changed. The brutal regime governed by Raul Castro remains the Western Hemisphere's longest-ruling military dictatorship.

KEY POINTS

- The Cuban government is the only one in Latin America that still actively persecutes its citizens on the basis of political and religious grounds.
- But a growing number of Cubans who are not persecuted blatantly milk the U.S. for welfare payments—made possible by America's overly lenient policy toward Cubans.
- In order to protect the truly persecuted, policymakers must require that Cuban nationals prove persecution in order to receive special benefits.

This paper, in its entirety, can be found at <http://report.heritage.org/bg3207>

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Yet, while persecution persists, over the past two decades, investigations have uncovered a growing trend of *non-persecuted* Cuban nationals migrating to the U.S.¹ Additionally, legal loopholes and the lack of penalties for unlimited travel back to the island have paved the way for massive welfare abuse.² The ease of entry into the U.S. has led to the growth of criminal networks throughout Latin America and South Florida.³ Lucrative human smuggling networks operate throughout the Caribbean, South and Central America, and all the way through Mexico into the U.S.⁴

The time to fix the U.S. policy toward Cuban nationals is now. Following the December 2014 announcement of the Obama Administration's new Cuba policy, there was sizeable uptick in immigration from the island to the United States. Cubans fearing an end to their special status in the U.S. left the island in vast numbers. Logically, Cubans anticipated that the change in U.S.–Cuban relations would result in the end of their special status. Yet the Obama Administration waited two years to repeal the Clinton-era “wet foot, dry foot” policy, and left behind a massive migrant crisis. In 2014, 24,278 Cubans entered the U.S. illegally. That number sharply increased to 43,159 in 2015, and an alarming 54,406 in 2016.

Reforms must recognize the vital need to curb abuses of the U.S. immigration system, the brutal nature of the Castro regime, and its continued hostility against the United States. U.S. policy must require Cuban immigrants to provide evidence of political or religious persecution, common on the island. The Obama Administration's radical decision to normalize relations with Cuba has generated the misconception that the U.S. ought to end protec-

tions for persecuted Cubans. To do so would ignore the Castro regime's continued violent repression of democratic and religious activists, and hostility toward U.S. interests.

A History of Human Rights Abuse

While proponents of President Obama's Cuba policy heralded a new era in U.S.–Cuba relations, independent organizations consistently find the Cuban government to be one of the most repressive in the world. Freedom House, “an independent watchdog organization dedicated to the expansion of freedom and democracy around the world,”⁵ ranks Cuba amongst the least-free countries in the world.⁶ It is “the only country in the Americas that consistently makes Freedom House's list of the Worst of the Worst: the World's Most Repressive Societies for widespread abuses of political rights and civil liberties.”⁷ Freedom House's 2016 “Freedom of the Press” report ranks Cuba's media amongst the 10 worst, similar to Uzbekistan, North Korea, and Belarus.⁸ Amnesty International holds that Cuban “government critics continue to be imprisoned” and that “[r]estrictions on freedom of expression is widespread. The government curtails freedom of association and assembly.”⁹ In 2015, Amnesty International campaigned successfully for the release of Cuban human rights activist and artist Danilo Maldonado Machado (El Sexto), whom they found to be a prisoner of conscience.

The Castro regime's history of brutality against its own citizens dates back to the onset of the communist revolution. The Cuba Archive's Truth and Memory Project has documented 3,615 deaths by firing squad, with up to 1,100 in the first three months following the revolution. The organization also reports an additional 1,253 extrajudicial kill-

1. Sally Kestin, Megan O'Matz, and John Maines, “Plundering America—The Cuban Pipeline,” *Sun Sentinel*, January 8, 2015, <http://interactive.sun-sentinel.com/plundering-america/> (accessed July 28, 2016).
2. Sally Kestin, Megan O'Matz, and John Maines, “U.S. Welfare Flows to Cuba,” *Sun Sentinel*, October 1, 2015, <http://www.sun-sentinel.com/us-cuba-welfare-benefits/sfl-us-cuba-welfare-benefits-part-1-htmlstory.html> (accessed July 28, 2016).
3. Kestin, O'Matz, and Maines, “Plundering America—The Cuban Pipeline.”
4. Robert E. Moffit, “Immigration Reform: A Step-by-Step Approach,” Heritage Foundation *Backgrounder* No. 2819, June 24, 2013, <http://www.heritage.org/research/reports/2013/07/immigration-reform-a-step-by-step-approach>.
5. Freedom House, “About Us,” <https://freedomhouse.org/about-us> (accessed July 29, 2016).
6. Freedom House, “Country Profile: Cuba,” <https://freedomhouse.org/report/freedom-world/2016/cuba> (accessed July 29, 2016).
7. *Ibid.*
8. Freedom House, “Freedom of the Press 2016,” https://freedomhouse.org/sites/default/files/FreedomofthePress_2016_FINAL.pdf (accessed February 8, 2017).
9. Amnesty International, “Cuba Human Rights,” <http://www.amnestyusa.org/our-work/countries/americas/cuba> (accessed July 29, 2016).

ings since the Castro regime came into power in 1959.¹⁰ Forced labor camps were introduced, and from the young age of 13 the majority of Cubans were forced to work in dangerous conditions in government factories and fields. This practice is still in place. For a short period between 1963 and 1968, the government created agriculture labor camps for “counterrevolutionaries,” known as Military Units to Aid Production (Unidades Militares de Ayuda de Produccion, UMAPs). The Organization of American States (OAS) reported in 1967 that more than 30,000 inmates were forced to work in squalid conditions; almost a hundred died from torture and over 500 ended up in psychiatric facilities.¹¹ The OAS report states that the goal of these camps was to “create free labor for the government” and “penalize youths who did not join communist groups.”¹² Innocent victims attempting to escape the island fared no better, as leaving the island is a crime punishable by death. In the “Tugboat Massacre” of 1994, the Cuban Coastguard purposefully sank a vessel of Cubans attempting to flee, killing 37 of the 68 passengers.¹³

The independent Cuban Commission for Human Rights (CCHR) cataloged 9,940 politically motivated arrests in 2016. The almost 10,000 arrests is an increase from the 8,616 in 2015.¹⁴ The CCHR estimates that 498 of these took place during President Obama’s three-day trip to Cuba in March 2016.¹⁵ Christian Solidarity Worldwide (CSW) and other independent organizations report unprecedented violations of religious freedoms by Cuban authorities. The report listed 2,380 violations in 2016. From 2014 to 2015, there was a “tenfold increase”—with

2,300 separate violations recorded in 2015, compared to 220 in 2014.”¹⁶ In the provinces of Guantánamo, Santiago, and Contramaestre, 100 churches were demolished and other properties were illegally seized.

In 2003, wives, mothers, and other female relatives of imprisoned dissidents started to attend Mass each Sunday dressed in white, and then walked silently through the streets. In reference to these *Damas de Blanco* (Ladies in White), CSW reported:

Week after week, state security agents physically and violently dragged scores of women away from Sunday morning services.... This tactic is also applied to religious leaders who are viewed as problematic, for whatever reason, by the authorities.... [F]or the first time in four years a church leader was sentenced to and served six months in prison for holding unauthorized religious services.¹⁷

Watchdog organizations have also followed the Cuban government’s continued practice of extrajudicial killings. On July 22, 2012, the Cuban government is believed to have murdered leading opposition figure Oswaldo Payá and his colleague Harold Cepero. Their car was deliberately run off a road by state security agents. Payá was an internationally recognized activist and a thought leader on a post-Castro Cuba. In 2002, the European Parliament awarded him its annual human rights Sakharov Prize for Freedom of Thought, and in 2005, he was nominated for the Nobel Peace Prize by Václav

10. Cuba Archive, “Update of Documented Cases, January 25, 2012 (Work in Progress),” http://cubaarchive.org/home/images/stories/1.25.2012_update.pdf (accessed March 6, 2017).

11. *Comisión Interamericana de Derechos Humanos* (Inter-American Commission on Human Rights), “Asesinatos de presos, muertes y suicidios por maltratos y enfermedades” (Assassinations of prisoners, deaths and suicides caused by mistreatment and diseases), <http://www.cidh.org/countryrep/cuba67sp/cap.1a.htm> (accessed July 29, 2016).

12. *Ibid.*

13. Cuba Archive, “Cuba: The Tugboat Massacre of July 13, 1994,” http://cubaarchive.org/home/images/stories/truth%20and%20memory/tugboat_massacre.pdf (accessed March 6, 2017).

14. *Comision Cubana de Derechos Humanos y Reconciliacion Nacional* (Cuban Commission for Human Rights and National Reconciliation), “Cuba: Algunos Actos de Represion Politica en el Mes de Enero de 2017” (Cuba: Numerous acts of political repression in the month of January of 2017), <https://docs.com/martagaba/3659/represion-politica-en-cuba-informe-de-enero-de> (accessed March 6, 2017).

15. *Ibid.*

16. Christian Solidarity Worldwide, “Cuba Freedom of Religion or Belief,” February 2017, <http://www.csw.org.uk/2017/02/06/report/3451/article.htm> (accessed February 8, 2017).

17. *Ibid.*

Havel, the former president and liberator of the Czech Republic.¹⁸

In July 2015, the Human Rights Foundation released a report directly implicating the Cuban government's role in Payá's death.¹⁹ The same year Payá was killed, Cuban human rights activist and prisoner of conscience Orlando Zapata Tamayo died in prison after the Cuban government denied him water during a hunger strike. The following year, a founder of the Ladies in White, Laura Inés Pollán, died after what is widely suspected to be poisoning by the Cuban government.²⁰

Legal Loopholes Spawned Transnational Criminal Organizations

In efforts to make it to the U.S., Cubans have increasingly turned to smugglers and "go-fast" boats, long and narrow vessels designed to reach high speeds, to circumvent the U.S. Coast Guard. The networks that smuggle migrants directly fund the drug trade and transnational criminal organizations (TCOs) in Latin America. Makeshift rafts and other small vessels are still used, though not as frequently.

Extensive networks of TCOs service U.S.-bound Cubans. Speaking of these networks, the director of Costa Rica's immigration authority called them "an international operation of unprecedented scope."²¹ Criminals reportedly charge up to \$15,000 to smuggle Cubans from Ecuador to the United States in a 3,400-mile-long journey.²² U.S. authorities have also

uncovered narcotic networks of Cubans recruited and trained on the island before moving to the United States. A similar pattern has been noted for other kinds of criminal activities, such as welfare and insurance fraud.²³ In some instances, Cuban government agents have been identified as ringleaders.²⁴

Investigations by the *Sun Sentinel*, a South Florida-based newspaper, have uncovered the costly impact on Florida.²⁵ A growing number of Cuban immigrants are returning to the island with their U.S. welfare benefits, under the auspices of their protected status. In Florida, this has contributed to massive health care fraud issues. Cubans represent less than 1 percent of the U.S. population, yet they are responsible for 41 percent of the arrests nationwide for health care fraud.²⁶ A preliminary Congressional Budget Office (CBO) estimate obtained by Florida Senator Marco Rubio and Florida Representative Carlos Curbelo in May 2016 shows that the U.S. would save \$2.45 billion in the next 10 years by terminating welfare benefits for non-persecuted Cuban migrants.²⁷

Cooperation on this issue will not be found with the current government in Havana. As direct recipients of the much-needed hard currency, the Castro regime grants an untold number of U.S. fugitives, both Cuban nationals and American citizens, safe haven on the island. While U.S. law mandates that welfare benefits be used domestically, the relevant federal and state agencies do not enforce this law. As such, the lack of negative consequences has cre-

18. Ana Rosa Quintana, "Why I Refuse to Acknowledge the US Embassy in Havana," *The Daily Signal*, July 20, 2015, <http://dailysignal.com/2015/07/20/why-i-refuse-to-acknowledge-the-us-embassy-in-havana/>.

19. Human Rights Foundation, "The Case of Oswaldo Payá," July 22, 2015, http://humanrightsfoundation.org/uploads/The_Case_of_Oswaldo_Pay%C3%A1-ENG.pdf (accessed July 29, 2016).

20. Cuban Democratic Directorate, "Extrajudicial Killings and Suspicious Deaths in Cuba 2009-2012," May/June 2013, http://lib.ohchr.org/HRBodies/UPR/Documents/Session16/CU/DDC_UPR_CUB_S16_2013_DirectorioDemocr%C3%A1ticoCubano_E.pdf (accessed July 28, 2016).

21. Jonathan Blitzer, "The Cuban Migrant Crisis," *The New Yorker*, January 16, 2016, <http://www.newyorker.com/news/news-desk/the-cuban-migrant-crisis> (accessed July 28, 2016).

22. *Ibid.*

23. Kestin, O'Matz, and Maines, "Plundering America—The Cuban Pipeline."

24. *Ibid.*

25. *Ibid.*

26. *Ibid.*

27. News release, "Video: On Senate Floor, Rubio Touts \$2.5 Billion Savings by Ending Abuse of Cuban Refugee Welfare Benefits," Office of Senator Marco Rubio, May 25, 2016, <https://www.rubio.senate.gov/public/index.cfm/press-releases?ID=65D6DB9C-9C21-4AD7-892B-8CC199B5CA4E> (accessed July 28, 2016).

ated a particularly perverse incentive for Cuban immigrants to spend their welfare benefits in Cuba where the cost of living is much lower. Where it once demonized Cuban American exiles, the indebted government in Havana has become more accepting of their return for extended, and even permanent, durations. The *Sun Sentinel* investigation highlights various stories of these abuses:

- “A 2012 complaint alleged a 75-year-old woman had moved to Camaguey two years earlier and a relative was withdrawing her Supplemental Security Income (SSI) money from a bank account and sending it to her. Social Security stopped payments, but not before nearly \$16,000 had been deposited into her account.”²⁸
- “Another recipient went to Cuba on vacation and stayed, leaving his debit card with a relative. Social Security continued his SSI payments for another six months—\$4,000 total—before an anonymous caller reported he had gone back to Cuba.”²⁹
- “A couple with a toddler in south Miami-Dade County, with a combined annual income of \$125,000, brought over the husband’s 67-year-old father, who then collected food stamps and \$8,400 a year in SSI.”³⁰
- “One crew opened a home health care agency in Miami in 2010 and within three days submitted \$1.5 million in fraudulent claims to Medicare.”³¹
- “One woman reportedly moved to Cuba in 2010 and died three years later, while still receiving SSI and food stamps, according to a 2014 tip to Florida welfare fraud investigators.”³²

- “Miami bail bondswoman Barbara Pozo said many of her Cuban clients talk openly about living in Cuba and collecting monthly disability checks, courtesy of U.S. taxpayers. ‘They just come here to pick up the money,’ Pozo said. ‘They pretend they’re disabled. They just pretend they’re crazy.’”³³

- “Lydia Perez worked for 45 years cleaning offices and working in a hotel kitchen but can’t afford to visit her native Dominican Republic. She sees Cuban neighbors in her Hialeah subsidized-housing complex receiving aid and returning to Cuba for visits. ‘They come, they get the money, and they go to Cuba,’ said Perez, 81.”³⁴

The numbers show the growing financial impact of Cubans who are on welfare. In Florida, welfare paid to Cuban immigrants who have not become U.S. citizens have risen by 23 percent between 2011 and 2014, while the benefits paid to immigrants from other countries have increased by only 5 percent.³⁵ This total includes food stamps and welfare for seniors and the disabled as well as short-term cash assistance. While Florida Cubans received \$300 million in government benefits, Mexicans in the same state obtained only \$459,000.³⁶ The total amount paid to Cubans on federal welfare adds up to \$680 million per year. SSI, which benefits seniors, accounts for 42 percent of this total.³⁷ Even elderly Cubans who have never had a job in the U.S. are eligible for SSI as part of their welfare benefits.

Additionally, the presumptive refugee status makes it easier for Cuban nationals who have entered the U.S. unauthorized to obtain Legal Permanent Residency (LPR) status after staying in the U.S. for one uninterrupted year. Upon obtaining

28. Kestin, O’Matz, and Maines, “U.S. Welfare Flows to Cuba.”

29. *Ibid.*

30. *Ibid.*

31. *Ibid.*

32. *Ibid.*

33. *Ibid.*

34. *Ibid.*

35. *Ibid.*

36. *Ibid.*

37. Megan O’Matz, “Proposed Cuts in Aid to Cubans Could Save Taxpayers Billions,” *Sun Sentinel*, May 25, 2016, <http://www.sun-sentinel.com/news/florida/fl-cuban-welfare-bill-savings-20160525-story.html> (accessed July 28, 2016).

LPR, they qualify for upwards of 80 other means-tested welfare programs. Another component of the Cuban Adjustment Act (CAA) that ought to be revised is the minimal standards for who is considered to be a Cuban national. In order to be adjusted under the CAA, U.S. law requires only one parent to be a Cuban-born national, essentially allowing individuals who have never lived on the island to obtain legal protected status in the U.S. “In the past seven years, 1,074 natives of countries including Russia, Angola, Spain, and even Kazakhstan have become permanent U.S. residents by claiming Cuban citizenship under the adjustment act, according to the U.S. Citizenship and Immigration Services.”³⁸

What the U.S. Should Do

The Trump Administration must reform policies that have been proven to be counterproductive to U.S. national interests. In order to protect against abuse of the U.S. immigration system while maintaining the protection of persecuted Cuban migrants, the U.S. government must:

- **Maintain the repeal of “wet foot, dry foot.”** It was a flawed policy that incentivized dangerous migration and led to the growth of human-smuggling networks throughout Latin America. Bringing it back would be nonsensical.
- **Limit welfare benefits to Cuban migrants who can prove persecution.** Currently, all Cubans except for those entering with a visa qualify for welfare benefits. This unfair immigration policy has been costly and has created a system ripe for exploitation. Qualifying for means-tested benefits must be based on religious or political grounds. Cubans have the ability to prove political and religious persecution, as Cuban officials issue documentation with each arrest or imprisonment.
- **Immediately reinstate the Cuban Medical Professional Parole Program.** The Castro

regime’s practice of forcibly conscripting Cuban medical professionals is tantamount to enslavement, and the Obama Administration’s repeal of the program was a direct overture to Havana. President Trump should put that program back in place immediately.³⁹

- **Require relevant federal agencies to report to Congress the number of Cuban immigrants who receive benefits.** To date, there is no accurate reporting on welfare funds to Cuban immigrants. As the appropriator, Congress has a right to know where the funds are going. Legislators should ask the relevant government agencies to submit annual reports detailing the number of welfare recipients. It should also seek retroactive reports from previous years in order to observe trends.
- **Penalize unauthorized travel to Cuba for means-tested benefit recipients.** Persecuted immigrants availing themselves of the protection of the U.S. should not be allowed unlimited travel back to their country of origin. The Department of Homeland Security should work in tandem with the Department of Treasury’s Office of Foreign Assets Control to allowable travel only for immediate family emergencies.
- **Amend the CAA so that it applies solely to Cuban nationals born on the island.** A clause of the CAA allows persons to adjust their legal status in the U.S. merely on the basis of having a Cuban parent. This shortcut has opened the door to people who were not born in Cuba, have never stepped foot on the island, nor suffered under the Cuban government to take on a policy intended to protect Cuban nationals.⁴⁰
- **Expand efforts to dismantle human smuggling in Latin America.** The activities of TCOs have corrupted and destabilized the region. President Trump’s promise to increase defense spend-

38. Sally Kestin, Megan O’Matz, and John Maines, “Under U.S. Law, Cuban Refugees Don’t Have to Be from Cuba,” *Sun Sentinel*, May 2, 2015, <http://interactive.sun-sentinel.com/cuban-adjustment-act/loop-hole> (accessed July 28, 2016).

39. U.S. Citizenship and Immigration Services, “Cuban Medical Professional Parole (CMPP) Program,” last updated January 19, 2017, <https://www.uscis.gov/humanitarian/humanitarian-parole/cuban-medical-professional-parole-cmpp-program> (accessed March 6, 2017).

40. Kestin, O’Matz, and Maines, “Under U.S. Law, Cuban Refugees Don’t Have to Be from Cuba.”

ing must provide additional support to U.S. Southern Command, the regional combatant command for Latin America.

Protecting the Integrity of the Law

For over half a century, Cuba has been governed by a communist totalitarian dictatorship that continues to deny basic civil liberties to its people and remains hostile to U.S. interests. It is in recognition of these uniquely repressive conditions in the Western Hemisphere that the U.S. retains the policy of protecting oppressed Cuban nationals. There is no doubt the policy has led to significant achievements. Since their arrival, Americans of Cuban origin have made an invaluable contribution to the U.S. The growing trend of Cuban nationals abusing this benevolent program, however, is unacceptable and must be stopped.

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