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THE FAVORED IMMIGRANT NO MORE: LIFTING EMBARGO IMPACT ON CUBAN IMMIGRATION

*Vienna Flores**

“DEPORTATION, Deportation, Deportation!” These three words seem to encompass America’s approach towards immigrants. Yet Cuban immigrants are treated differently. For almost fifty years, the turbulent political relationship between the United States and Cuba provided relaxed immigration policies for Cubans sailing away from communism. Cubans risked their lives to cross the tumultuous sea and reach the shores of a better tomorrow. But with recent discussions of improved relations between the neighboring countries, the tides are changing.

This report analyzes whether the effects of improved relations between the United States and Cuba will affect favorable Cuban immigration laws. Section one analyzes the history of the Cuban embargo. Section two discusses the history of the Cuban Adjustment Act and U.S. immigration laws. Section three focuses on the revival of economic ties with Cuba by the Obama Administration. Finally, section four deliberates the effects of lifting the Cuban embargo on the Cuban Adjustment Act.

I. THE HISTORY OF THE CUBAN EMBARGO

Bitter disagreements between the United States and Cuba have caused a long-held political grudge that has excluded Cuba from the rest of the world for more than fifty years.¹ This state of rancor, however, would have been unexpected a century ago. After its bitter defeat in the Spanish-American War in 1898, Spain renounced its rights to Cuba, Puerto Rico, and Guam, among others, and granted the lands to the United States.² Cuba’s elusive independence came shortly thereafter. Despite that independence, the United States maintained the right to involve itself in Cuban affairs and continued to station troops in the country.³ The

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1. 22 U.S.C. § 2370 (1994).

2. Clair Suddath, *A Brief History of U.S.-Cuba Relations*, TIME (Apr. 15, 2009), <http://content.time.com/time/nation/article/0,8599,1891359,00.html>.

3. *Id.*

Platt Amendment of 1903 furthered U.S. involvement in Cuba by also “permitt[ing] the United States to lease or buy lands for the purpose of . . . establishing naval bases. . . and coaling stations in Cuba.”⁴ The United States wanted to remain connected with Cuba to promote “a government adequate for the protection of life, property, and individual liberty.”⁵ Nevertheless, Franklin D. Roosevelt repealed the act in 1934.⁶

Then came the Cuban Revolution, led by a young, politically-charged man named Fidel Castro.⁷ Castro initiated the Revolution after the then President, General Fulgencio Batista, overthrew the standing government and cancelled political elections in 1952, elections in which Castro intended to participate.⁸ Angry about the state of the government, Castro and his brother, Raúl, tried to create an uprising, failed, and landed in prison.⁹ Castro was released from prison in 1955.¹⁰ He then fled to Mexico to plan his next move with the help of a young Marxist named Ernesto ‘Che’ Guevara.¹¹ In 1956, Castro, prepared for vengeance, began his attacks against Batista.¹² Meanwhile, the United States imposed an “arms embargo against Batista’s government,” indicating support for Castro’s movement.¹³ Castro finally overthrew Batista and became Cuba’s leader late in December of 1958.¹⁴ The country hailed Castro as a hero¹⁵ and the United States “immediately recognized the new regime.”¹⁶

But the United States’ embrace was not long-lived. By 1960, Castro’s communism swept the country when he took all private land and companies and placed a heavy tax on U.S. products.¹⁷ Castro completely opposed American interference in Cuban affairs and had no reservations about sharing that opinion.¹⁸ In 1961, President Dwight D. Eisenhower issued a “unilateral embargo on all exports to Cuba.”¹⁹ Castro responded by executing favorable trade laws with the Soviet Union, which the

4. *Plat Amendment (1903)*, OUR DOCUMENTS, <http://www.ourdocuments.gov/doc.php?flash=true&doc=55> (last visited July 7, 2015).

5. *The United States, Cuba, and the Platt Amendment, 1901*, LIB. OF CONG., <https://history.state.gov/milestones/1899-1913/platt> (last visited Jul. 7, 2015).

6. *Id.*; see also *Plat Amendment (1903)*, *supra* note 4.

7. Suddath, *supra* note 2.

8. *Fidel Castro*, BBC HISTORY, http://www.bbc.co.uk/history/people/fidel_castro (last visited July 7, 2015).

9. *Id.*

10. *Fidel Castro Fast Facts*, CNN LIBR., <http://www.cnn.com/2012/12/04/world/americas/fidel-castro-fast-facts/> (last updated Sept. 15, 2015).

11. *Fidel Castro*, *supra* note 8.

12. Christopher Minster, *The Cuban Revolution*, ABOUT EDUC., <http://latinamericanhistory.about.com/od/historyofthecaribbean/p/08cubanrevo.htm> (last visited Jul. 7, 2015).

13. Suddath, *supra* note 2.

14. *Id.*

15. Minster, *supra* note 12.

16. Suddath, *supra* note 2.

17. *Id.*

18. Marc-William Palen, *U.S.-Cuba Embargo Goes Beyond the Cold War*, HISTORY TODAY (Dec. 21, 2014), <http://www.historytoday.com/marc-william-palen/us-cuba-embargo-goes-beyond-cold-war>.

19. *On This Day: Eisenhower Places Embargo on Exports to Cuba*, FINDING DULCINEA (Oct. 19, 2011, 5:00 AM), <http://www.findingdulcinea.com/news/on-this-day/>

United States saw as absolute betrayal and the final straw.²⁰ On February 7, 1962, President John F. Kennedy issued the now infamous Cuban Embargo that economically and diplomatically isolated Cuba.²¹

President Kennedy's proclamation urged that Cuba's alignment with Soviet Communism and "the present Government of Cuba [was] incompatible with the principles and objectives of the Inter-American system."²² Under the Foreign Assistance Act of 1961,²³ President Kennedy instituted the embargo against "importation into the United States of all goods of Cuban origin and all goods imported from or through Cuba," and all exports.²⁴ The embargo also severed any existing ties between the United States and Cuba.²⁵ This marked the beginning of bitterness and countless grim occasions between two neighboring countries.²⁶

II. THE CURRENT STATE OF IMMIGRATION LAW

The embargo caused food shortages and increased poverty to sweep through Cuba.²⁷ Because of the enduring problems, the United States gave Cubans the opportunity to escape the Communist regime by legally fleeing to America.²⁸ U.S. Citizenship and Immigration Services provided refugee or asylum status when a person had been "persecuted or fear[ed] they [would] be persecuted on account of race, religion, nationality, and/or membership in a particular social group or political opinion."²⁹ Refugees are people who are outside of their country and do not return due to fear of impending harm.³⁰ By contrast, asylees are those who qualify as refugees, but are already in the United States.³¹ The privilege of lawful Cuban immigration to the United States has persisted since November 2, 1966, because of the Cuban Adjustment Act (CAA).³²

September-October-08/On-this-Day—Eisenhower-Places-Embargo-on-Exports-to-Cuba.html.

20. Palen, *supra* note 18.

21. Suddath, *supra* note 2; *see also* The President Embargo on all Trade with Cuba, Proclamation No. 3447, 27 Fed. Reg. 1085 (Feb. 7, 1962).

22. The President Embargo on all Trade with Cuba, 27 Fed. Reg. 1085.

23. *See generally* 22 U.S.C. § 2151 (2000).

24. The President Embargo on all Trade with Cuba, 27 Fed. Reg. 1085.

25. *Id.*

26. The Cuban Missile Crisis occurred when the U.S. found that the Soviet Union had nuclear weapons in Cuba pointed at the United States. Suddath, *supra* note 2. The Bay of Pigs was "the CIA's botched attempt to overthrow Castro by training Cuban exiles for a ground attack[.]" which was followed by Operation Mongoose, and more attempts on Castro's life. *Id.*

27. Greg Myre, *The U.S. and Cuba: A Brief History of a Complicated Relationship*, NPR (Dec. 17, 2015, 2:09 PM), <http://www.npr.org/sections/parallels/2014/12/17/371405620/the-u-s-and-cuba-a-brief-history-of-a-tortured-relationship>.

28. Sally Kestin et al., *Special treatment: Under U.S. law, Cuban refugees don't have to be from Cuba*, SUN SENTINEL, <http://interactive.sun-sentinel.com/cuban-adjustment-act/loophole/> (last visited Jul. 7, 2015).

29. *Refugees & Asylum*, USCIS, <http://www.uscis.gov/humanitarian/refugees-asylum> (last visited Jul. 7, 2015).

30. *Id.*

31. *Id.*

32. Cuban Adjustment Act of 1966, Pub. L. No. 89-732, 80 Stat. 1161 (1966).

“Cubans are the only nationality to which Congress has awarded this special treatment.”³³ The CAA provided that

any alien who is a native or citizen of Cuba and who has been inspected and admitted or paroled into the United States subsequent to January 1, 1959 and has been physically present in the United States for at least two years, may be adjusted by the Attorney General, in his discretion and under such regulations as he may prescribe, to that of an alien lawfully admitted for permanent residence if the alien makes an application for such adjustment, and the alien is eligible to receive an immigrant visa and is admissible to the United States for permanent residence.³⁴

The act was later amended to allow adjustment of permanent status after one year and one day of presence in the United States.³⁵ The CAA also applies to the spouse and child of a Cuban refugee, regardless of their place of birth or nationality.³⁶ Persons fleeing Cuba are “presumed to be refugees under international law,” which Congress used to justify the CAA.³⁷ There was no limit to the number of people granted refugee or asylee status in the beginning.³⁸

The Cold War’s end caused turbulent economic times that pounded Cuba in the 1980s, causing more Cubans to seek political asylum in foreign countries, including the United States.³⁹ Castro allowed Cubans to travel to the United States on boats from the Mariel Port if they were unhappy and wanted to leave.⁴⁰ But Castro also maliciously sent criminals and mental hospital patients to Florida coasts, and then refused to take them back.⁴¹ The “Mariel Boatlift” led to an estimated 125,000 undocumented immigrants entering the United States.⁴² With that surge of Cuban immigration in mind, the United States set boundaries and worked with Cuba to promote “safe, legal, and orderly immigration.”⁴³

At the time, President Bill Clinton claimed that “[t]he Cuban Government [would] not succeed in any attempt to dictate American immigra-

33. Brooks Jackson, *Why Can Cubans Stay in the U.S.?*, FACTCHECK.ORG (Apr. 15, 2008), <http://www.factcheck.org/2008/04/why-can-cubans-stay-in-the-us/>.

34. Cuban Adjustment Act of 1966, Pub. L. No. 89-732, §1, 80 Stat. 1161 (1966).

35. *Green Card for a Cuban Native or Citizen*, USCIS, <http://www.uscis.gov/green-card/other-ways-get-green-card/green-card-cuban-native-or-citizen> (last visited July 9, 2015).

36. Cuban Adjustment Act of 1966, Pub. L. No. 89-732, §1, 80 Stat. 1161 (1966).

37. Ellen Wasem, *Cuban Migration Policy and Issues*, CRS REPORT FOR CONGRESS 2 (Jan. 19, 2006), http://digital.library.unt.edu/ark:/67531/metacrs9147/m1/1/high_res_d/RS20468_2006Jan19.pdf.

38. Lara Burt and Jeanne Batalova, *Refugees and Asylees in the United States*, MIGRATION POL’Y INST. (Feb. 3, 2014), <http://www.migrationpolicy.org/article/refugees-and-asylees-united-states>.

39. Suddath, *supra* note 2.

40. *Id.*

41. *Id.*

42. *Mariel Boatlift*, GLOBALSECURITY.ORG, <http://www.globalsecurity.org/military/ops/mariel-boatlift.htm> (last visited Jul. 7, 2015).

43. Wasern, *supra* note 37.

tion policy.”⁴⁴ Clinton’s stance came to be known as the “wet-foot, dry-foot” policy, in which Cubans found at sea would not be granted asylum or refugee status.⁴⁵ Instead, they would be taken to Guantanamo Bay or returned to Cuba without ever having the opportunity to gain legal immigration status in the United States.⁴⁶ This changed the previously enthusiastic outlook of Cuban immigration but continued to help those who reached the United States without interception by the U.S. Coast Guard.⁴⁷ It also limited the number of visas provided for Cubans to 20,000 per year.⁴⁸

III. A CHANGING TIDE

After the embargo was executed, the United States continued to enact legislation to advance its plan of politically isolating Cuba. The Cuban Democracy Act of 1992 encouraged the President to advise other countries trading with Cuba to sever their ties.⁴⁹ All countries failing to follow the United States’ advice would be subject to sanctions.⁵⁰ The Cuban Democracy Act’s projection of U.S. power was polemic and denounced by the United Nations multiple times as an impermissible extraterritorial extension of U.S. jurisdiction.⁵¹ Nonetheless, the United States strengthened its boycott once again in 1996, after Cuba shot down two U.S. civilian planes, through The Cuban Liberty and Democratic Solidarity Act, also known as the Helms-Burton Act.⁵² The act provided that any foreign countries continuing trade with Cuba would also have an embargo enforced against them.⁵³

But finally, after a devastating hurricane in 2001, the United States graciously decided to help Cuba by allowing American companies to sell food to the country.⁵⁴ It was the first positive gesture between the two countries in many years. In December of 2014, President Obama “ordered the restoration of full diplomatic relations with Cuba and the opening of an embassy in Havana for the first time in more than a half-century as he vowed to ‘cut loose the shackles of the past’ and sweep aside one of

44. William J. Clinton, *The President’s News Conference*, AM. PRESIDENCY PROJECT (Aug. 20, 1994), <http://www.presidency.ucsb.edu/ws/?pid=48994>.

45. Sylvia Rusin et al., *Cuban Immigrants in the United States*, MIGRATION POL’Y INST. (Apr. 7, 2015), <http://www.migrationpolicy.org/article/cuban-immigrants-united-states>.

46. U.S. General Accounting Office, *Cuba: US Response to the 1994 Cuban Migration Crisis*, GAO/NSIAD-95-211, at 3 (Letter Report, Sept. 18, 1995), available at <http://www.gao.gov/archive/1995/ns95211.pdf>.

47. *Id.*

48. *Cuban Immigrants*, IMMIGR. IN AM. (Sept. 30, 2011, 7:18 PM), <http://immigration-in-america.org/453-cuban-immigrants.html>.

49. 22 U.S.C. § 6003 (2015).

50. The sanctions would prevent countries that maintained ties with Cuba from receiving: (1) assistance under the Foreign Assistance Act of 1961; and (2) forgiveness of any debt to the United States. *Id.*

51. See, e.g., G.A. Res. 50/10, ¶ 5, U.N. Doc. A/RES/50/10 (Nov. 2, 1995).

52. 22 U.S.C. § 6031 (1996); see also Suddath, *supra* note 2.

53. Suddath, *supra* note 2.

54. *Id.*

the last vestiges of the Cold War.”⁵⁵ On January 16, 2015, the Expert Administration Regulations was amended to “authorize the export and re-export of certain items to Cuba that [were] intended to improve the living conditions of the Cuban people; support independent economic activity and strengthen civil society in Cuba; and improve the free flow of information to, from, and among, the Cuban people.”⁵⁶ The adjustments were meant to help improve Cuba’s communication with the rest of the world by allowing for the commercial sale of software, hardware, and other devices.⁵⁷

The Department of Treasury amended the Cuban Assets Control Regulation policy to “facilitate travel” between the United States and Cuba by authorizing airlines to fly to Cuba.⁵⁸ Additionally, U.S. financial institutions are now allowed to open accounts in Cuba and individuals are allowed to send more money to family members there.⁵⁹ On May 29, 2015, the United States removed Cuba from its terror list.⁶⁰ Just a month later, the United States and Cuba announced that they would restore diplomatic ties and reopen their respective embassies.⁶¹

Regardless of the advances, however, eradicating the entire embargo will be difficult. The United Nations has attempted to condemn the U.S. embargo for twenty-two years without any success.⁶² Lifting the embargo requires the approval of not only Congress, but the president as well.⁶³ In any event, the many laws affecting Cuba—especially those that address accessible Cuban immigration policy—will be the source of much political debate in the upcoming months.

IV. IMPACT ON THE CUBAN ADJUSTMENT ACT

The mere mention of immigration sows discord. This negative stigma has put immigration reform on every political agenda. Yet resolution seems elusive. The same holds true for the CAA, especially given recent

55. Peter Baker, *U.S. to Restore Full Relations with Cuba, Erasing a Last Trace of Cold War Hostility*, N.Y. TIMES (Dec. 17, 2014), http://www.nytimes.com/2014/12/18/world/americas/us-cuba-relations.html?_r=0.

56. Cuba: Providing Support for the Cuban People, 80 Fed. Reg. 11,2286 (Jan. 16, 2015) (to be codified at 15 C.F.R. pts. 736, 740, 746, and 748).

57. *Id.*

58. 31 C.F.R. § 515 (2015).

59. *Id.*

60. Nahal Toosi, *Cuba Removed from U.S. List of State Sponsors of Terrorism*, POLITICO (May 29, 2015, 7:05 PM), <http://www.politico.com/story/2015/05/us-removes-cuba-state-sponsor-terrorism-118411.html>.

61. Matt Schiavenza, *After Cuba: The Only Three Countries that have No Relations with the U.S.*, THE ATLANTIC (July 1, 2015), <http://www.theatlantic.com/international/archive/2015/07/cuba-us-embassy-bhutan-relations/397523/>.

62. Peter James Spielmann, *UN General Assembly Votes Against US Cuba Embargo*, BREITBART (Oct. 29, 2013), <http://www.breitbart.com/news/da9nut1o0/>.

63. Sahil Kapur, *Congress Stands in the Way of Lifting the U.S. Embargo on Cuba*, TPM (Dec. 17, 2014, 1:02 PM), <http://talkingpointsmemo.com/dc/cuba-embargo>.

talks of restoring relations with Cuba.⁶⁴ The United States' relationship with Cuba improves daily, which undoubtedly means that the current immigration policies are subject to change. It also suggests that the once favorable act may be terminated forever. Congress had an initial goal with the CAA: to free Cuba "from Communist domination [so] that Cuban people [would], again, be able to enjoy the benefits of freedom."⁶⁵ The CAA continues to encourage Cubans to flee oppression. As of 2013, the Pew Research Center reported that there were 1,889,000 Cubans in the United States.⁶⁶

With the immense amounts of Cuban immigrants traversing dangerous seas to reach a safe haven, the United States adopted the strict immigration regulations mentioned above. The Cuban Adjustment Act was amended in 1996 to include a provision that the law would be "repealed" once Cuba had "a democratically elected government" in power.⁶⁷ Although this has yet to happen, politicians have not wasted any time arguing against the act. With the progress between the two countries, it appears likely that the CAA will change in the upcoming years. Politicians now believe Cuban immigrants will abuse the system by traveling to the United States and merely claiming persecution, and then staying for a year and a day to gain legal status before returning to Cuba.⁶⁸

Moreover, most Cubans still come to the United States "seeking better economic conditions" instead of "fleeing political persecution" as required for asylum.⁶⁹ The newly amended laws will exacerbate this problem because travel between the two countries will grant Cubans easier access to the United States and increase the number of immigrants seeking refugee status.⁷⁰ With increased immigration concerns, many argue that the CAA unjustly favors Cubans over other immigrants⁷¹ and that the policy should be eradicated "to foster safe and orderly migration and to save lives."⁷² But it would take congressional power to repeal the

64. Patricia Mazzei, *Miami-Dade Commission Urges Congress to Revise Cuban Adjustment Act*, MIAMI HERALD (Jan. 21, 2015), <http://www.miamiherald.com/news/local/community/miami-dade/article7896648.html>.

65. H.R. REP. NO. 89-1978, at 4 (1966).

66. Mark Hugo Lopez et al., *Diverse Origins: The Nation's 14 Largest Hispanic-Origin Groups*, PEW RES. CENTER (June 19, 2013), <http://www.pewhispanic.org/2013/06/19/diverse-origins-the-nations-14-largest-hispanic-origin-groups/>.

67. Omnibus Consolidated Appropriations Act, 1997, Pub. L. No. 104-208, § 606, 110 Stat. 3009 (1996).

68. Lizette Alvarez, *Law Favoring Cuban Arrivals is Challenged*, N.Y. TIMES (Feb. 1, 2015), <http://www.nytimes.com/2015/02/02/us/law-favoring-cuba-arrivals-is-challenged.html>.

69. Daniel González, *Cuban Migrants Could Lose Easy Access to Green Cards*, USA TODAY (Feb. 22, 2015, 3:00 PM), <http://www.usatoday.com/story/news/nation/2015/02/22/cuban-migrants-green-cards/23844129/>.

70. Alvarez, *supra* note 68.

71. Susan Eckstein, *Time to End Special Privileges for Cuban Immigrants*, REUTERS (Jan. 6, 2015), <http://blogs.reuters.com/great-debate/2015/01/05/time-to-end-special-privileges-for-cuban-immigrants/>.

72. Vicki Huddleston, *Move Forward with Cuba*, N.Y. TIMES (Dec. 26, 2015), http://www.nytimes.com/2014/12/27/opinion/move-forward-with-cuba.html?_r=0.

longstanding law.⁷³

President Obama announced that there would no change to immigration policy.⁷⁴ But if there were to be a change, the number of undocumented immigrants would spike. The current act requires Cubans to wait a year and a day before applying for legal status.⁷⁵ A sort of immigration limbo exists until then. When a Cuban first arrives in the United States they are paroled into the country.⁷⁶ Parole allows a person to enter the country for a specific reason, including “urgent humanitarian reasons,” and considers the person an inadmissible non-citizen.⁷⁷ If the act were repealed, many paroled Cubans would be unable to apply for lawful residence and, in turn, would remain in the country as undocumented immigrants unless they were grandfathered in. Improved diplomatic relations lessen any chance for recognition of a “humanitarian crisis” that would allow Cubans to realize refugee or asylum status.⁷⁸

But what if restoring the relationship between the two countries does not improve conditions in Cuba? America believed in fostering Cuban immigrants because communism was politically oppressive—a view antithetical to the United States’ continued business with and support of other communist countries.⁷⁹ Even if Cuba does not become a democratic country, the United States will surely change its immigration policies soon.

73. Mayle González, *Is the Cuban Adjustment Act on the way out?*, HAVANA TIMES (Jan. 15, 2015), <http://www.havanatimes.org/?p=108642>.

74. *Id.*

75. *Green Card for a Cuban Native or Citizen*, *supra* note 35.

76. *Cuban Parole Programs*, U.S. EMBASSY TO CUBA, <http://havana.usembassy.gov/cfrp.html> (last visited July 9, 2015).

77. Immigration and Nationality Act § 212(d)(5)(A), 8 U.S.C. § 1182 (2013).

78. Alfonso Chardy and Nora Gamez Torres, *U.S.-Cuba Diplomacy: Will it Jeopardize Green Cards?*, MIAMI HERALD (Jan. 12, 2015), <http://www.miamiherald.com/news/nation-world/world/americas/cuba/article6088452.html>.

79. *Rethinking the Cuba Perk*, CHICAGO TRIBUNE (Feb. 16, 2015), http://articles.chicagotribune.com/2013-02-16/opinion/ct-edit-cuba-20130216_1_cuban-americans-bipartisan-immigration-reform-bill-legal-status.