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LATIN AMERICAN UPDATE: A DISCUSSION OF POTENTIAL REFORMS IN CUBA AND DEVELOPMENTS IN IMMIGRATION POLICY IN MEXICO

Allen C. Unzelman*

I. HUMAN RIGHTS ACTIVIST FREED FROM CUBAN PRISON AFTER EIGHT YEARS

ON March 11, 2011, human rights activist Oscar Elias Biscet was freed by the Cuban government after being imprisoned since 2003.¹ Biscet, whose activist efforts are likened to Nelson Mandela's, is a forty-nine year old doctor who was arrested along with a number of other individuals for their resistance to the Cuban Government and sentenced to a twenty-four year prison term.² Biscet is recognized as one of Cuba's foremost dissidents, which made him a target for unfair treatment and what some claim to be racism at the hands of the Cuban government.³ Throughout the eight years he spent in confinement, Biscet was detained in brutish conditions, spending a significant amount of his prison term in solitary confinement.⁴

Biscet's human rights activism and resistance to the Cuban Government were the root cause of a number of arrests between 1998 and 2002.⁵ In 1998, the Cuban Government ousted Biscet from Cuba's health system, thereby preventing him from practicing medicine in the country.⁶ In 1999, through his affiliation with the Lawton Foundation, Biscet was arrested and charged with "dishonoring national symbols," "public disorder," and "inciting delinquent behavior" for such acts as public

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1. *Cuba Releases Jailed Dissident Oscar Elias Biscet*, BBC Mar. 11, 2011, <http://www.webcitation.org/5x9p78vEO>.

2. Tony Mauro, *Cuban Prisoner Released, With Pro Bono Help From 2 U.S. Firms*, THE NAT'L L. J., Mar. 23, 2011, http://www.law.com/jsp/law/international/LawArticleIntl.jsp?id=1202487439513&Cuban_Prisoner_Released_With_Pro_Bono_Help_From_US_Firms&slreturn=1&hblogin=1.

3. *See id.*; *The Myth of Cuban Health Care*, NAT'L REV., July 30, 2007, <http://www.latinamericanstudies.org/cuba/health-myth.htm>.

4. Mauro, *supra* note 2.

5. *Id.*

6. *Biography*, LAWTON FOUNDATION FOR HUMAN RIGHTS, http://www.lawtonfoundation.com/index.php?option=com_content&view=article&id=5&Itemid=2 (last visited Apr. 16, 2011).

demonstrations and displaying the Cuban flag upside down.⁷ During his detention, Biscet allegedly experienced torturous conditions at the hands of the Cuban Government.⁸ In total, Biscet was detained twenty-six times from 1998 to 1999.⁹ Following his release in 2002, Biscet once again commenced his human rights efforts, which included a peaceful demonstration on December 6, 2002.¹⁰ On that day, Biscet and other protesters were arrested after laying down in front of a house and chanting “Long live human rights” and “freedom for political prisoners.”¹¹

Biscet was convicted in the midst of what is remembered as Cuba’s “black spring” of 2003.¹² Between March 18 and March 24 of 2003, the Castro government detained a total of ninety government dissidents.¹³ The government accused the dissidents of “damaging Cuba’s territorial integrity and economy” and handed down sentences ranging from fourteen to thirty years.¹⁴ Twenty-nine of those targeted were journalists accused of acting against the “‘integrity and sovereignty of the state’ or of collaborating with foreign media for the purpose of ‘destabilizing the country.’”¹⁵ All of the journalists were found guilty after only one day trials.¹⁶

Biscet’s sacrifice and dedication to bringing human rights to Cuba earned worldwide recognition.¹⁷ In 2007, United States President George W. Bush honored Biscet’s commitment by awarding him the Medal of Freedom while he was still imprisoned in Cuba.¹⁸ Moreover, in February of 2011, Biscet was nominated for the Nobel Peace Prize.¹⁹ Biscet’s dedication to Cuba inspires him to remain in the country and return to his cause after every release from prison and despite pressure from the Cuban government to leave the country after his release.²⁰ Indicative of

7. *Id.*

8. *Id.*

9. *Id.*

10. *Id.*

11. *Id.*

12. Juan O. Tamayo & Juan Carlos Chavez, *Cuban Dissident Oscar Biscet to be Released*, MIAMI HERALD, Mar. 10, 2011, <http://www.miamiherald.com/2011/03/10/2109217/cuban-dissident-oscar-biscet-to.html>.

13. Claire Voeux, *Cuba: No Surrender by Independent Journalists, Five Years From “Black Spring”*, REPORTERS WITHOUT BORDERS, Mar. 2008, available at http://www.rsf.org/IMG/pdf/Cuba_report.pdf.

14. *Id.*

15. Carlos Lauria, Monica Campbell, & María Salazar, *Cuba’s Long Black Spring*, COMM. TO PROTECT JOURNALISTS, Mar. 18, 2008, <http://cpj.org/reports/2008/03/cuba-press-crackdown.php>.

16. *Id.*

17. See *Who is Dr. Oscar Biscet*, <http://www.oscarscuba.com/who-is-dr-biscet/> (last visited Apr. 23, 2011).

18. *Dr. Oscar Elias Biscet to Receive the Presidential Medal of Freedom*, MISCELÁNEAS DE CUBA, Oct. 29, 2007, <http://www.miscelaneasdecuba.net/web/article.asp?artID=12408>.

19. Press Release, Freedom Now, Cuban Human Rights Advocate Dr. Oscar Elias Biscet Gonzalez Nominated for Nobel Peace Prize (Feb. 11, 2011), available at <http://www.freedom-now.org/new/cuban-human-rights-advocate-dr-oscar-elias-biscet-gonzalez-nominated-for-nobel-peace-price/>.

20. Mauro, *supra* note 2; Tamayo & Chavez, *supra* note 12.

his commitment to remain in the country, Biscet rejected offers for an earlier release in exchange for his promise to leave the country.²¹

Not surprisingly, it was this international support that ultimately played a pivotal role in Biscet's release.²² Negotiations and other "back door" tactics were undertaken by law firms in the United States and by the Catholic Church.²³ In the United States, Andrew Strenio Jr. and Lauren Buckely of Sidley Austin and Jeremy Zucker of Hogan Lovells worked for six years to free Biscet.²⁴ As Strenio explained, the task required "quite delicate work" and "back channel communications" to finally convince the Cuban Government to grant Biscet's freedom.²⁵ Cardinal Jaime Ortega of Havana also worked with the Castro government to secure the release of some of seventy-five prisoners.²⁶ Of those released by the government, all but ten left the country for Spain upon being released.²⁷ The remaining ten, including Biscet, will remain in Cuba to continue their advocacy despite government warnings that they could once again be detained.²⁸

Since his release, Biscet, who draws his motivation from the teachings of Martin Luther King, Jr., Mahatma Gandhi and Henry David Thoreau,²⁹ has continued his advocacy for governmental reforms in Cuba.³⁰ His recent efforts included a meeting with former United States President Jimmy Carter.³¹ As Biscet explained, "[w]e want comprehensive changes and a market system associated to freedoms and things that lead to a harmonious and happy life in our nation."³² According to Biscet, such a transition would require the resignation of the Catros.³³ "Let them assign other people to represent their interests and let us begin a transition toward freedoms for the Cuban people," Biscet explained.³⁴

II. A COUNTRY ON THE VERGE OF CHANGE?

Biscet's freedom comes at a time of unpredictable change for Cuba. Although recent events reflect the possibility that the Cuban government may loosen its grip on the struggling economy, it is not clear to what

21. Mauro, *supra* note 2; Tamayo & Chavez, *supra* note 12.

22. See Mauro, *supra* note 2; Tamayo & Chavez, *supra* note 12.

23. See Mauro, *supra* note 2; Tamayo & Chavez, *supra* note 12.

24. Mauro, *supra* note 2.

25. *Id.*

26. Tamayo & Chavez, *supra* note 12.

27. *Id.*

28. *Id.*

29. *Biography*, *supra* note 6.

30. Juan Carlos Chavez, *Oscar Elías Biscet says Cuban Dissidents are Willing to Discuss Transitional Government*, MIAMI HERALD, Apr. 11, 2011, available at <http://www.miamiherald.com/2011/04/10/v-fullstory/2161375/oscar-elias-biscet-says-cuban.html>.

31. *Id.*

32. *Id.*

33. *Id.*

34. *Id.*

degree or in what form these changes will occur.³⁵

These changes in economic governance may come in a number of forms. In March, the Cuban government announced its plans to reduce Cuba's currency by around eight percent in an effort to aid economic recovery.³⁶ The move is expected to make Cuban travel more affordable and encourage the country's tourism industry, which is a vital source of income for Cuba.³⁷ In addition, last September, President Castro announced the government's intention to lay off around 500,000 state workers.³⁸ President Castro stated that the changes would curtail the government's economic role by permitting more workers to enter the private sector.³⁹ The government also announced its intention to loosen controls placed on small business and allow certain industries, such as hair dressers, to work privately.⁴⁰ Thus far, the government has granted 180,000 individuals the right to be self-employed.⁴¹ Even further, the government has transferred ownership of several pieces of government owned land to private individuals.⁴²

Although President Castro emphasizes that his plans fall far short of capitalist reforms, recent changes reflect his acknowledgement that changes are necessary in order revitalize the struggling economy.⁴³ But despite his intentions, it is not clear at what pace or to what degree these changes will come to fruition.⁴⁴ In March, for example, Castro admitted that the previously announced reduction in the state work force would be postponed and that such reforms would more likely take place over a five year period.⁴⁵ Hence, these changes may lead to less economic changes than expected.⁴⁶ As explained by BBC Havana reporter Michael Voss, "[i]t looks as if what they are saying is that they are prepared to step back and allow self-employment and small co-operatives but they will not go further than that."⁴⁷

In April's Communist Party Congress, which featured a rare appearance by Fidel Castro, President Raul Castro again emphasized the need

35. See Randal C. Archibold, *In a Changing Cuba, Many Remain Skeptical*, N.Y. TIMES, Apr. 18, 2011, available at <http://www.nytimes.com/2011/04/19/world/americas/19cuba.html?ref=americas>.

36. Q&A: *Cuba's Economic Changes*, BBC, Mar. 15, 2011, <http://www.bbc.co.uk/news/business-12706588>.

37. *Id.*

38. *Cuba's Raul Castro Admits Mass Lay-Offs Behind Schedule*, BBC, Mar. 1, 2011, <http://www.bbc.co.uk/news/world-latin-america-12606044>.

39. *Paul Castro: No Reform by Cuba Economy Control to Ease*, BBC, Aug. 2, 2010, <http://www.bbc.co.uk/world-latin-america-10834192>.

40. *Id.*

41. Michael Voss, *Fidel Castro Supports Brother Raul at Cuba Congress*, BBC, Apr. 19, 2011, <http://www.bbc.co.uk/new/world-latin-america-1319006>.

42. *Id.*

43. Q&A: *Cuba's Economic Changes*, *supra* note 36.

44. See Archibold, *supra* note 35.

45. *Id.*

46. See *id.*

47. Q&A: *Cuba's Economic Changes*, *supra* note 36.

for change.⁴⁸ Although the meeting led to the approval of an economic and social reform package, very little is known about the details of the plan or how and when it will actually unfold.⁴⁹

On the aggregate, these reforms provide at least some hope that through the revitalization of the Cuba's sluggish economy, successful government reforms may finally come to fruition. At the same time, however, it is unclear how much change these reforms will actually bring about. At the least, the recent release of political prisoners, coupled with signs that the government may finally be willing to consider conceding at least some of its economic control, may create momentum for additional changes going forward.

III. RECENT MEXICAN IMMIGRATION RIGHTS AFFORDS RIGHTS TO MIGRANTS

A law recently approved by the Mexican Senate will enhance the rights of all immigrants who enter Mexican territory.⁵⁰ The measure provides "that all migrants in Mexico have certain minimum rights regardless of their legal status."⁵¹ Chief among these rights include "the right to education, emergency medical service, to preserve life, civil registration and the administration of justice."⁵² The measure is designed to create a greater system of safeguards for those traveling through Mexican territory.⁵³ The law states that "[n]obody shall be declared illegal because of his/her condition as an immigrant, and adequate guarantees have to exist so that citizens of other countries can pass through Mexico."⁵⁴ Under the new law, police will still be permitted to stop individuals at the border.⁵⁵

The law's passage comes amidst growing concerns over the safety of those entering Mexico.⁵⁶ In August of 2010, the bodies of seventy-two murdered migrants were found in Mexico's state of Tamaulipas.⁵⁷ In December of 2010, in Oaxaca, fifty more immigrants were kidnapped on a

48. Voss, *supra* note 41.

49. *See id.*

50. *El Senado Mexicano Avala una Ley que da Derechos Minimos a los Migrantes* [The Mexican Senate Backs a Bill that Gives Migrants Minimum Rights], CNN MEXICO, Feb. 24, 2011, <http://mexico.cnn.com/nacional/2011/02/24/el-senado-mexicano-avala-un-ley-que-da-derechos-minimos-a-los-migrantes>.

51. *Id.*

52. *Id.*

53. *See Mexican Senate Passes Immigration Bill Amid Controversy*, FOX NEWS LATINO, Feb. 24, 2011, <http://latino.foxnews.com/latino/news/2011/02/23/mexican-senate-passes-immigration-amid-controversy>.

54. Emile Schepers, *Mexican Senate Passes Progressive Immigration Law*, PEOPLE'S WORLD, Mar. 7, 2011, available at <http://www.peoplesworld.org/mexican-senate-passes-progressive-immigration-law/>.

55. *Id.*

56. *Mexican Senate Passes Immigration Bill*, *supra* note 53.

57. *La Marina Encuentra una Fosa con 72 Cuerpos en un Rancho en Tamaulipas* [The Marina Found a Grave with 72 Bodies on a Ranch in Tamaulipas], CNN MEXICO, Aug. 25, 2010, <http://mexico.cnn.com/nacioal/2010/08/25/la-marina-encuentra-una-fosa-con-72-cuerpos-en-un-rancho-en-tamaulipas>.

train.⁵⁸ Moreover, a February report released by the National Human Rights Commission depicted how bad the problem had become.⁵⁹ The study reported the kidnapping of 11,333 migrants in Mexican territory.⁶⁰

The new law attempts to provide an answer to those who called Mexico President Felipe Calderon's criticism of Arizona's controversial immigration law hypocritical because of Mexico's own immigration struggles.⁶¹ The bill is aimed not only at safeguarding migrants from abuse at the hands of criminals, but also at protecting them from potential abuses perpetrated by corrupt members of the police force.⁶² In the past, immigration agents and police have been accused of accepting bribes, robbing immigrants, and even "handing [migrants] to kidnappers."⁶³ As an illustration of this corruption, in 2007, a number of immigrants' lives were placed in danger by immigration officials when the immigrants refused to submit to the bribes and demands of the officials.⁶⁴ Even further, in 2010, immigration workers were caught sneaking Chinese immigrants into the country and, in a separate incident, it was discovered that a detention facility was being used for drug purposes.⁶⁵ Many perceive these reforms as a reaction to these problems.⁶⁶

Although some wanted the bill to include measures that ensured strong immigration enforcement powers, these provisions were ultimately stripped from the final bill.⁶⁷ Proposed Article 26 would have provided enhanced powers to Federal Police for immigration purposes, while proposed Article 151 would have levied harsh civil penalties on those who hired illegal immigrants.⁶⁸ As Senator Humberto Andrade explained, "[w]e took out article 26 entirely because we want to send a clear signal that the Senate is aware of the contribution and the value that immigrants bring to our country."⁶⁹

The stricken portions of the bill were initially submitted by the National Action Party and the Revolutionary Institutional Party.⁷⁰ Accord-

58. *Mexico Plans Sweeping Immigration Overhaul to Help Curb Violent Crime, Corruption*, FOX NEWS, Jan. 1, 2011, <http://www.foxnews.com/world/2011/01/02/apnewsbreak-mexico-plans-immigration-shake>.

59. *Mexican Senate Passes Immigration Bill*, *supra* note 53; Nadie Sanders, *11,333 Migrantes Fueron Secuestrados en Mexico en 2010; CNDH [11,333 Migrants were Kidnapped in Mexico in 2010; CNDH]* CNN MEXICO, Feb. 22, 2011, <http://mexico.cnn.com/nacional/2011/02/22/11333-migrantes-fueron-secuestrados-en-mexico-en-2010-cndh>.

60. *Mexican Senate Passes Immigration Bill*, *supra* note 53; *11,333 Migrantes*, *supra* note 59.

61. Andrea Nill Sanchez, *Mexican Senate Approves Immigration Reform*, THINK PROGRESS, Feb. 28, 2011, <http://wonkroom.thinkprogress.org/2011/02/28/mexico-immigration-reform>.

62. *Id.*

63. *Mexico Plans Sweeping Immigration Overhaul*, *supra* note 58.

64. *Id.*

65. *Id.*

66. *See id.*

67. Sanchez, *supra* note 61.

68. *Id.*

69. *Id.*

70. Schepers, *supra* note 54.

ing to Senator Humberto, the new law enables Mexico “to take [their] place as a country with a congruent human rights policy, and with the moral ability to demand of other countries respect for [their] nationals.”⁷¹ The Labor Party and the Revolutionary Democratic Party, along with the help of interest groups, are credited with getting these sections removed from the final bill.⁷² The new law also ensures that even if born to parents who are illegal immigrants, all children born within Mexican territory will enjoy Mexican citizenship rights.⁷³ Although immigration officials may check individuals at the border, “law enforcement cannot verify immigration status beyond customs and border checkpoints.”⁷⁴

Although the effectiveness of the new law is yet to be seen, at the least, the new law provides a means of protecting migrants and ceasing the corrupt acts that hindered the rights of those who enter Mexican territory.

71. Sanchez, *supra* note 61.

72. Schepers, *supra* note 54.

73. *Id.*

74. Sanchez, *supra* note 61.

