

# CRS Report for Congress

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## **Cuba: Issues for the 109<sup>th</sup> Congress**

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# Cuba: Issues for the 109<sup>th</sup> Congress

## Summary

Cuba under Fidel Castro remains a hard-line communist state with a poor record on human rights — a record that has worsened significantly since 2003. With the cutoff of assistance from the former Soviet Union, Cuba experienced severe economic deterioration from 1989-1993. While there has been some improvement since 1994, as Cuba has implemented limited reforms, the economy remains in poor shape.

As in past years, the main issue for U.S. policy toward Cuba in the 109<sup>th</sup> Congress will be how to best support political and economic change in one of world's remaining communist nations. Since the early 1960s, U.S. policy toward Cuba has consisted largely of isolating the island nation through comprehensive economic sanctions. Another component of U.S. policy consists of support measures for the Cuban people, including private humanitarian donations and U.S.-sponsored radio and television broadcasting to Cuba. The Bush Administration has further tightened restrictions on travel for family visits, other categories of travel, and on sending private humanitarian assistance to Cuba. While there appears to be broad agreement on the overall objective of U.S. policy toward Cuba — to help bring democracy and respect for human rights to the island — there are several schools of thought on how to achieve that objective. Some advocate maximum pressure on the Cuban government until reforms are enacted; others argue for lifting some U.S. sanctions that they believe are hurting the Cuban people. Still others call for a swift normalization of U.S.-Cuban relations.

In the 108<sup>th</sup> Congress, several FY2005 appropriations bills — Agriculture; Commerce/Justice/State; and Transportation/Treasury — had provisions that would have eased Cuba sanctions in various ways, especially on travel, but ultimately these provisions were not included in the FY2005 omnibus appropriations measure (P.L. 108-447). The Bush Administration had threatened to veto both the Transportation/Treasury and Agriculture appropriations measures if they contained provisions weakening Cuba sanctions. Numerous additional legislative initiatives were introduced that would have eased sanctions on Cuba, but no action was completed on these bills. In other action, the 108<sup>th</sup> Congress approved several resolutions regarding Cuba's poor human rights situation; continued funding for democracy and human rights through the U.S. Agency for International Development and the National Endowment for Democracy; and continued funding for U.S. government-sponsored radio and television broadcasting to Cuba (Radio and TV Marti).

The 109<sup>th</sup> Congress will likely continue an active interest in Cuba concerning human rights, debate over economic sanctions (especially on travel), food and agricultural exports to Cuba, terrorism issues, Radio and TV Marti, bilateral anti-drug cooperation, and migration issues. This report, which will be updated regularly, examines issues in U.S.-Cuban relations and tracks legislative initiatives on Cuba in the 109<sup>th</sup> Congress. For additional information, see CRS Report RL31139, *Cuba: U.S. Restrictions on Travel and Remittances*.

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# Cuba: Issues for the 109<sup>th</sup> Congress

## Most Recent Developments<sup>1</sup>

From November 29-December 6, 2004, the Cuban government released seven political prisoners, including noted poet and journalist Raul Rivero and economist and journalist Oscar Espinosa Chepe. Of the 75 dissidents imprisoned in March, 14 were released in 2004. Many observers maintain that the releases were aimed at improving Cuba's relations with Europe. In early January 2005, Cuba reopened official contacts with the embassies of eight European nations. (See *Human Rights* below.)

On November 20, 2004, both the House and the Senate agreed to the conference report (H.Rept. 108-792) to the FY2005 omnibus appropriations measure (P.L. 108-447), which included nine regular appropriations bills. The measure dropped provisions easing Cuba sanctions that had been included in the Agriculture, Commerce/Justice/State, and Transportation/Treasury appropriations bills. The measure also fully funded the Administration's requests for \$27.6 million for Cuban broadcasting (Radio and TV Marti) and \$9 million in Economic Support Funds for Cuban projects to promote democratization, respect for human rights, and the development of a free market economy.

On November 12, 2004, the Treasury Department's Office of Foreign Assets Control (OFAC) instructed U.S. banks to stop transfers of funds to U.S. companies for sales of agricultural and medical products to Cuba. The temporary move was taken so that OFAC could examine whether there were any violations of the provisions of the Trade Sanctions Reform and Export Enhancement Act of 2000 (P.L. 106-387, Title IX) requiring that the sales be conducted in "payment of cash in advance." Some observers believe that the action could jeopardize U.S. agricultural sales to Cuba, which in the first nine months of 2004, amounted to some \$320 million. (See *Food and Medical Exports* below.)

## Political Conditions

Although Cuba has undertaken some limited economic reforms in recent years, politically the country remains a hard-line communist state. Fidel Castro, who turned 78 on August 13, 2004, has ruled since the 1959 Cuban Revolution, which ousted the corrupt government of Fulgencio Batista. Castro soon laid the foundations for an authoritarian regime by consolidating power and forcing moderates out of the

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<sup>1</sup> This report draws heavily from CRS Report RL31740, *Cuba: Issues for the 108<sup>th</sup> Congress*, which discusses all legislative initiatives considered or introduced in the 108<sup>th</sup> Congress.

government. In April 1961, Castro stated that the Cuban Revolution was socialist, and in December 1961, he proclaimed himself to be a Marxist-Leninist. From 1959 until 1976, Castro ruled by decree.

A Constitution was enacted in 1976 setting forth the Communist Party as the leading force in the state and in society (with power centered in a Politburo headed by Fidel Castro). The Constitution also outlined national, provincial, and local governmental structures. Executive power is vested in a Council of Ministers, headed by Fidel Castro as President. Legislative authority is vested in a National Assembly of People's Power, currently with 609 members, that meets twice annually for brief periods. While Assembly members were directly elected for the first time in February 1993, only a single slate of candidates was offered. In October 1997, the Cuban Communist Party held its 5<sup>th</sup> Congress (the prior one was held in 1991) in which the party reaffirmed its commitment to a single party state and reelected Fidel and Raul Castro as the party's first and second secretaries. Direct elections for the National Assembly were again held in January 1998 and January 2003, but voters again were not offered a choice of candidates.

In response to the challenge posed by the Varela Project, a human rights initiative that called for changes to the Constitution (see below), the Cuban government orchestrated a national referendum in late June 2002, signed by 8.1 million people, that declared that Cuba's socialist system could not be changed. Subsequently the National Assembly on June 26, 2002, approved amendments to the Constitution stating that "socialism and the revolutionary political and social system in the Constitution ... are irrevocable; and Cuba will never again return to capitalism."<sup>2</sup>

## Outlook

Observers are divided over the future of the Castro government. Although most believe that the demise of the communist government is inevitable, there is considerable disagreement over when or how this may occur. Some point to Castro's age and predict that the regime will collapse when Castro is not at the helm. Other observers maintain that Fidel Castro may remain in power for years, and that Cuba has a plan for the succession of his brother Raul who is about five years younger than Fidel. They point to Cuba's strong security apparatus and the extraordinary system of controls that prevents dissidents from gaining popular support. Moreover, observers maintain that Cuba's elite has no interest in Castro's overthrow, and that Castro still enjoys considerable support, in part because of the social benefits of the Cuban revolution, but also because Cubans see no alternative to Castro.

Even if Castro is overthrown or resigns, the important question remaining is the possibility or viability of a stable democratic Cuba after Castro. Analysts point out that the Castro government has successfully impeded the development of independent civil society, with no private sector, no independent labor movement,

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<sup>2</sup> "Special Session of the National Assembly, A Transcendent Yes," *Granma International*, June 30, 2002, p. 1.

and no unified political opposition. For this reason, they contend that building a democratic Cuba will be a formidable task, one that could meet stiff resistance.

## Human Rights

Cuba has a poor record on human rights, with the government sharply restricting freedoms of expression, association, assembly, movement, and other basic rights. It has cracked down on dissent, arrested human rights activists and independent journalists, and staged demonstrations against critics. Although some anticipated a relaxation of the government's oppressive tactics in the aftermath of the Pope's January 1998 visit, government attacks against human rights activists and other dissidents have continued since that time.

The State Department's most recent annual human rights report on Cuba, issued in February 2004, states that the Cuban "authorities routinely continued to harass, threaten, arbitrarily arrest, detain, imprison, and defame human rights advocates and members of independent professional associations, including journalists, economists, doctors, and lawyers, often with the goal of coercing them into leaving the country." The report asserts that "the Interior Ministry Department of State Security investigated and actively suppressed political opposition and dissent" and "maintained a pervasive system of surveillance through undercover agents, informers, rapid response brigades (RRBs), and neighborhood-based Committees for the Defense of the Revolution (CDRs)." Security forces and prison officials reportedly beat and abused prisoners and other detainees, and prison conditions remained harsh and life threatening.

**Crackdown in 2003.** In March 2003, the Cuban government began a massive crackdown on independent journalists and librarians, leaders of independent labor unions and opposition parties, and other democracy activists, including those supporting the Varela Project. Human rights activist Elizardo Sanchez, head of the Cuban Commission for Human Rights and National Reconciliation, called the crackdown "the most intense wave of repression in the history of Cuba."<sup>3</sup> Some 75 activists were arrested, subjected to summary trials and prosecutions, and sentenced to prison terms ranging from 6 to 28 years. Foreign journalists and diplomats were excluded from the trials. Among the activists were 27 independent journalists, including Raul Rivero and Oscar Espinosa Chepe, sentenced to 20 years, and Omar Rodríguez Saludes, sentenced to 27 years. Other sentenced democracy activists included economist Marta Beatriz Roque (who had been imprisoned from July 1997 until May 2000), who received 20 years; Hector Palacios, a leader of the Varela Project, who received 25 years; and Luis Enrique Ferrer García of the Christian Liberation Movement, who received 28 years. Another prominent political prisoner, Oscar Elías Biscet, (who had been arrested in December 2002 after three years in prison) was also tried in April 2003 and sentenced to 25 years in prison.

In a further deterioration of the human rights situation, the Cuban government executed three men on April 11, 2003, who had hijacked a ferry in Havana in an

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<sup>3</sup> Nancy San Martin, "Cuba: Dissidents Were Eroding Socialist System," *Miami Herald*, April 10, 2003.

attempt to reach the United States. The men were executed by firing squads after summary trials that were held behind closed doors; four other ferry hijackers received life sentences while another received 30 years in prison.

**Rationale for the 2003 Crackdown.** Analysts see a variety of potential reasons for Cuba's severe crackdown on democracy activists. The Cuban government asserts that the crackdown was justified because the defendants were supported by the U.S. government and that U.S. diplomats in Cuba, most notably the head of the U.S. Interests Section in Havana, James Cason, often met with the dissidents. Some analysts believe that the crackdown was a clear message by the Cuban government that it will not tolerate the U.S. government's active and open support for the opposition movement. Other analysts emphasize that the crackdown was an effort by Castro to strengthen the regime's political control in light of a faltering economy and dim economic prospects ahead. According to this view, an increasingly assertive opposition movement could become a national security threat to the Castro regime in the tough economic times ahead. Along these lines, some analysts see the crackdown as a way for the regime to clear away any potential opposition in order to ensure that the eventual succession of Raul Castro to power will be smooth.

Some observers maintain that the Cuban government's willingness to jeopardize the possibility of eased U.S. trade and travel restrictions as an indication that it currently views the dissident movement as a serious security threat. Others, however, believe that the Cuban government judged that there would not be any movement to ease the embargo under the Bush Administration under any circumstances, and felt that it had little to lose in cracking down on the opposition movement.

Finally, a view often heard when Castro takes harsh action that jeopardizes an improvement in relations with the United States is that Castro actually is opposed to any further opening to the United States because it could threaten his regime's control. According to this view, the crackdown against the opposition blocks any potential easing of U.S. policy.

**Release of Several Prisoners in 2004.** In 2004, the Cuban government released 14 of the 75 arrested in March 2003 for health reasons. At the same time, however, it continued its harassment of democracy and human rights activists, including the imprisonment of several dissidents during the year. Human rights groups in Cuba estimate that there are between 300-400 political prisoners.

In the first half of the year, seven prisoners were released for health reasons, including noted economist and democracy activist Marta Beatriz Roque, who was released in April.

From late November until early December 2004, the Cuban government released seven prisoners: Oscar Espinosa Chepe, Margarito Broche, and Marcelo Lopez on November 29; Raul Rivero, and Oswaldo Alfonso Valdes on November 30; Edel José Garcia on December 2; and Jorge Olivero Castillo on December 6. Many observers maintain that the releases were aimed at improving Cuba's relations with Europe.

**Varela Project.** This human rights initiative within Cuba has received attention since 2002. Named for the 19<sup>th</sup> century priest, Felix Varela, who advocated independence from Spain and the abolition of slavery, the Varela Project has collected thousands of signatures supporting a national plebiscite for political reform in accordance with a provision of the Cuban Constitution. The referendum, if granted, would call for respect for human rights, an amnesty for political prisoners, private enterprise, and changes to the country's electoral law that would result in free and fair elections. The initiative is organized by Oswaldo Paya, who heads the Christian Liberation Movement, and it is supported by other notable Cuban human rights activists.

On May 10, 2002, organizers of the Varela Project submitted 11,020 signatures to the National Assembly calling for a national referendum. This was more than the 10,000 required under Article 88 of the Cuban Constitution. Former President Jimmy Carter noted the significance of the Varela Project in his May 14, 2002 address in Havana that was broadcast in Cuba. Carter noted that “when Cubans exercise this freedom to change laws peacefully by a direct vote, the world will see that Cubans, and not foreigners, will decide the future of this country.”<sup>4</sup>

In response to the Varela Project, the Cuban government orchestrated its own referendum in late June 2002 that ultimately led to the National Assembly amending the Constitution to declare Cuba's socialist system irrevocable.

The Varela Project has persevered despite the March 2003 human rights crackdown, which included the arrests of 42 active supporters of the human rights initiative. On October 3, 2003, Oswaldo Paya delivered more than 14,000 signatures to Cuba's National Assembly, again requesting a referendum on democratic reforms.

**Legislative Initiatives.** In the 108<sup>th</sup> Congress, both houses approved resolutions — S.Res. 97 (Nelson, Bill) and H.Res. 179 (Diaz-Balart, Lincoln) — condemning Cuba's poor human rights situation in the aftermath of the March 2003 crackdown on independent journalists and other democracy activists. In further action, the Senate approved S.Res. 62 (Ensign) in June 2003, calling on OAS and U.N. human rights bodies, the European Union, and human rights organizations around the world to call attention to the human rights situation in Cuba. Finally, the Senate approved S.Res. 328 (Nelson, Bill) in April 2004, expressing the sense of the Senate regarding the continued human rights violations committed by Fidel Castro and the Cuban government. In addition to resolutions on the human rights situation, Congress funds democracy and human rights projects for Cuba in annual Foreign Operations and Commerce, Justice, and State appropriations measures. For more details, see *U.S. Funding to Support Democracy and Human Rights*, below.

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<sup>4</sup> “Text of Jimmy Carter's Speech, Broadcast Live to Cuban People,” *Associated Press*, May 15, 2002.

## Economic Conditions<sup>5</sup>

With the cutoff of assistance from the former Soviet Union, Cuba experienced severe economic deterioration from 1989-1993, although there has been improvement since 1994. Estimates of economic decline in the 1989-93 period range from 35-50%. From 1994-2000, however, economic growth averaged 3.7% annually, with a low of 0.4% in 1994 and a high of 7.8% in 1996.

Growth rates since 2001 have averaged about 2.5%, with 3% growth in 2001, 1.5% in 2002, 2.6% in 2003, and 3% in 2004.<sup>6</sup> Growth in 2001 and 2002 slowed in the aftermath of the effects of Hurricane Michelle and the September 11, 2001 terrorist attacks in the United States. The terrorist attacks severely affected Cuba's tourist industry, with reports of some hotels closing and restaurants being empty. Hurricane Michelle damaged some 45,000 homes and severely hurt the agricultural sector. Low world prices for sugar and nickel and Venezuela's April-September 2002 suspension of oil shipments to Cuba because of Cuba's slow payment also contributed to the economic slowdown.<sup>7</sup> Economic growth in 2004 was affected by a drought in eastern Cuba, the worst in 40 years, that severely damaged agricultural crops, as well as by Hurricanes Charley and Ivan that caused significant damage and flooding in western Cuba.

Cuba has expressed pride for the nation's accomplishments in health and education. The World Bank estimates that in 2002, the adult literacy rate was 97%, life expectancy was 77 years, and the under-5 years of age mortality rate was 9 per 1,000, the lowest rate in Latin America and comparable to the rate of the United States. Nevertheless, the country's economic decline has reduced living standards considerably and resulted in shortages in medicines and medical supplies.

When Cuba's economic slide began in 1989, the government showed little willingness to adopt any significant market-oriented economic reforms, but in 1993, faced with unprecedented economic decline, Cuba began to change policy direction. Beginning in 1993, Cubans were allowed to own and use U.S. dollars and to shop at dollar-only shops previously limited to tourists and diplomats. Self-employment was

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<sup>5</sup> For an overview of the Cuban economy, see CRS Report RL30837, *Cuba: An Economic Primer*, by Ian F. Fergusson.

<sup>6</sup> "Cuba Country Report," Economist Intelligence Unit (EIU) Country Reports, April and November 2004.

<sup>7</sup> Venezuela provided Cuba with 53,000 barrels of oil per day under a five-year bilateral agreement signed in October 2000, with favorable financing terms for Cuba. This provided Cuba with about one-third of its oil needs. In the aftermath of the failed ouster of President Hugo Chavez in April 2002, Venezuela suspended oil shipments to Cuba, but these shipments were resumed in September 2002 after Cuba and Venezuela agreed to a restructuring of Cuba's \$142 million debt owed to Venezuela for its oil purchases. See Jose de Cordoba, "Cuba's Weak Economy May be Battered Again," *Wall Street Journal*, June 6, 2002; "Venezuela Shuts Off the Oil Spigot," *CubaNews*, June 2002, p. 12; "Venezuela: Halt in Oil to Cuba May Ease Pressure on Chavez," *Strategic Forecasting*, May 30, 2002, available at [[http://web2.stratfor.com/corporate/static\\_index.neo](http://web2.stratfor.com/corporate/static_index.neo)]; and "Latin America Roundup," *Miami Herald*, September 9, 2002.

authorized in more than 100 occupations in 1993, most in the service sector, and by 1996 that figure had grown to more than 150 occupations. Other Cuban economic reforms included breaking up large state farms into smaller, more autonomous, agricultural cooperatives (Basic Units of Cooperative Production, UBPCs) in 1993; opening agricultural markets in September 1994 where farmers could sell part of their produce on the open market; opening artisan markets in October 1994 for the sale of handicrafts; allowing private food catering, including home restaurants (*paladares*) in June 1995 (in effect legalizing activities that were already taking place); approving a new foreign investment law in September 1995 that allows fully owned investments by foreigners in all sectors of the economy with the exception of defense, health, and education; and authorizing the establishment of free trade zones with tariff reductions typical of such zones in June 1996. In May 1997, the government enacted legislation to reform the banking system and established a new Central Bank (BCC) to operate as an autonomous and independent entity.

Despite these measures, the quality of life for many Cubans remains difficult — characterized by low wages, high prices for many basic goods, shortages of medicines, and power outages — and some analysts fear that the government has begun to backtrack on its reform efforts. Regulations and new taxes have made it extremely difficult for many of the nation’s self-employed. Some home restaurants have been forced to close because of the regulations. Some foreign investors in Cuba have also begun to complain that the government has backed out of deals or forced them out of business. In April 2004, the Cuban government limited the use of dollars by state companies for any services or products not considered part of their core business. Some analysts viewed the measure as an effort to turn back the clock on economic reform measures.<sup>8</sup>

On October 25, 2004, Fidel Castro announced that U.S. dollars no longer would be used in entities that currently accept dollars (such as stores, restaurants, and hotels). Instead, Cubans would need to exchange their dollars for “convertible pesos,” with a 10% surcharge for the exchange. Cubans could exchange their dollars or deposit them in banks with the surcharge until November 14. Dollar bank accounts will still be allowed, but Cubans will not be able to deposit new dollars into the accounts.

## **U.S. Policy Toward Cuba**

In the early 1960s, U.S.-Cuban relations deteriorated sharply when Fidel Castro began to build a repressive communist dictatorship and moved his country toward close relations with the Soviet Union. The often tense and hostile nature of the U.S.-Cuban relationship is illustrated by such events and actions as: U.S. covert operations to overthrow the Castro government culminating in the ill-fated April 1961 Bay of Pigs invasion; the October 1962 missile crisis in which the United States confronted the Soviet Union over its attempt to place offensive nuclear missiles in Cuba; Cuban support for guerrilla insurgencies and military support for revolutionary governments

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<sup>8</sup> Larry Luxner, “New Decree Limits Dollar Transactions as Cuba Tightens Controls Once Again,” *CubaNews*, April 2004.

in Africa and the Western Hemisphere; the 1980 exodus of around 125,000 Cubans to the United States in the so-called Mariel boatlift; the 1994 exodus of more than 30,000 Cubans who were interdicted and housed at U.S. facilities in Guantanamo and Panama; and the February 1996 shutdown by Cuban fighter jets of two U.S. civilian planes operated by the Cuban American group, Brothers to the Rescue, which resulted in the death of four U.S. crew members.

Since the early 1960s, U.S. policy toward Cuba has consisted largely of isolating the island nation through comprehensive economic sanctions. These sanctions were made stronger with the Cuban Democracy Act (CDA) of 1992 (P.L.102-484, Title XVII) and with the Cuban Liberty and Democratic Solidarity Act of 1996 (P.L. 104-114), often referred to as the Helms/Burton legislation. The CDA prohibits U.S. subsidiaries from engaging in trade with Cuba and prohibits entry into the United States for any vessel to load or unload freight if it has engaged in trade with Cuba within the last 180 days. The Helms/Burton legislation, enacted in the aftermath of Cuba's shooting down of two U.S. civilian planes in February 1996, combines a variety of measures to increase pressure on Cuba and provides for a plan to assist Cuba once it begins the transition to democracy. Among the law's sanctions is a provision in Title III that holds any person or government that traffics in U.S. property confiscated by the Cuban government liable for monetary damages in U.S. federal court. Acting under provisions of the law, however, both President Clinton and President Bush have suspended the implementation of Title III at six-month intervals.

Another component of U.S. policy, a so-called second track, consists of support measures for the Cuban people. This includes U.S. private humanitarian donations, medical exports to Cuba under the terms of the Cuban Democracy Act of 1992, U.S. government support for democracy-building efforts, and U.S.-sponsored radio and television broadcasting to Cuba. In addition, the 106<sup>th</sup> Congress approved the Trade Sanctions Reform and Export Enhancement Act of 2000 (P.L. 106-387, Title IX) that allows for agricultural exports to Cuba, albeit with restrictions on financing such exports.

The Clinton Administration made several changes to U.S. policy in the aftermath of the Pope's January 1998 visit to Cuba, which were intended to bolster U.S. support for the Cuban people. These included the resumption of direct flights to Cuba (which had been curtailed after the February 1996 shutdown of two U.S. civilian planes), the resumption of cash remittances for the support of close relatives in Cuba (which had been curtailed in August 1994 in response to the migration crisis with Cuba), and the streamlining of procedures for the commercial sale of medicines and medical supplies and equipment to Cuba. In January 1999, President Clinton announced several additional measures to support the Cuban people. These included a broadening of cash remittances to Cuba, so that all U.S. residents (not just those with close relatives in Cuba) could send remittances to Cuba; an expansion of direct passenger charter flights to Cuba from additional U.S. cities other than Miami (direct flights later in the year began from Los Angeles and New York); and an expansion of people-to-people contact by loosening restrictions on travel to Cuba for certain categories of travelers, such as professional researchers and those involved in a wide range of educational, religious, and sports activities.

## Bush Administration Policy

The Bush Administration essentially has continued the two-track U.S. policy of isolating Cuba through economic sanctions while supporting the Cuban people through a variety of measures. However, within this policy framework, the Administration has emphasized stronger enforcement of economic sanctions and has moved to further tighten restrictions on travel, remittances, and humanitarian gift parcels to Cuba. There has been considerable reaction to the Administration's June 2004 tightening of restrictions for family visits and other categories of travel.

President Bush made his first major statement on his Administration's policy toward Cuba on May 18, 2001. He affirmed that his Administration would "oppose any attempt to weaken sanctions against Cuba's government ... until this regime frees its political prisoners, holds democratic, free elections, and allows for free speech." He added that he would "actively support those working to bring about democratic change in Cuba."<sup>9</sup> In July 2001, President Bush asked the Treasury Department to enhance and expand the enforcement capabilities of the Office of Foreign Assets Control. The President noted the importance of upholding and enforcing the law in order to prevent "unlicensed and excessive travel," enforce limits on remittances, and ensure that humanitarian and cultural exchanges actually reach pro-democracy activists in Cuba.

On May 20, 2002, President Bush announced a new initiative on Cuba that included four measures designed to reach out to the Cuban people: 1) facilitating humanitarian assistance to the Cuban people by U.S. religious and other non-governmental organizations (NGOs); 2) providing direct assistance to the Cuban people through NGOs; 3) calling for the resumption of direct mail service to and from Cuba;<sup>10</sup> and 4) establishing scholarships in the United States for Cuban students and professionals involved in building civil institutions and for family members of political prisoners. While the President said that he would work with Congress to ease sanctions if Cuba made efforts to conduct free and fair legislative elections and adopt meaningful market-based reforms, he also maintained that full normalization of relations would only occur when Cuba had a fully democratic government, the rule of law was respected, and human rights were fully protected. The President's initiative did not include an explicit tightening of restrictions on travel to Cuba that some observers had expected. The President did state, however, that the United

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<sup>9</sup> The White House, "Remarks by the President in Recognition of Cuba Independence Day", May 18, 2001.

<sup>10</sup> Direct mail service was suspended in 1962. The Cuban Democracy Act of 1992 directed the U.S. Postal service to take actions to provide direct mail service. In January 1999, President Clinton called for the resumption of direct mail service. In the past, Cuba has responded to U.S. overtures about direct mail service by maintaining that the two countries would need to enter into a civil-aviation agreement. Cuba in the past has also expressed concern about potential terrorism that could occur with direct mail service and would want to discuss with the United States measures to prevent such activity before the resumption of direct mail. See Philip Brenner, "Washington Loosens the Knot Just a Little," *NACLA Report on the Americas*, March 1, 1999.

States would “continue to enforce economic sanctions on Cuba, and the ban on travel to Cuba, until Cuba’s government proves that it is committed to real reform.”<sup>11</sup>

On October 10, 2003, the President announced three initiatives “to hasten the arrival of a new, free, democratic Cuba.” First, the President instructed the Department of Homeland Security to increase inspections of travelers and shipments to and from Cuba in order to more strictly enforce the trade and travel embargo. Second, the President announced that the United States would increase the number of new Cuban immigrants each year, improve the method of identifying refugees, redouble efforts to process Cubans seeking to leave Cuba, initiate a public information campaign to better inform Cubans of the routes to safe and legal migration to the United States. Third, the President announced the establishment of a “Commission for Assistance to a Free Cuba,” that would help plan for Cuba’s transition from communism to democracy and help identify ways to help bring it about.

**Tightened Sanctions in 2004.** In 2004, the Bush Administration took several measures to tighten U.S. sanctions against Cuba. In February, President Bush ordered the Department of Homeland Security to expand its policing of the waters between Florida and Cuba with the objective of stopping pleasure boating traffic.<sup>12</sup> In March, the State Department announced that it would deny visas to those Cubans who participated in the “show trials” of dissidents in March 2003, an action that will reportedly cover some 300 Cubans.<sup>13</sup>

On May 6, 2004, President Bush endorsed the recommendations of a report issued by the inter-agency Commission for Assistance to a Free Cuba, chaired by Secretary of State Colin Powell. The Commission made recommendations for immediate measures to “hasten the end of Cuba’s dictatorship” as well as longer-term recommendations to help plan for Cuba’s transition from communism to democracy in various areas. In total, the President directed that up to \$59 million be committed to implement key recommendations of the Commission, apparently including reprogrammed FY2004 funding and new FY2005 funding. This total includes up to \$36 million for democracy-building activities “to empower Cuban civil society;” up to \$18 million for regular airborne broadcasts to Cuba and the purchase of a dedicated airborne platform for the transmission of Radio and TV Marti broadcasts into Cuba in order “to break the information blockade;” and \$5 million in public diplomacy efforts by U.S. Embassies worldwide to disseminate information about Cuba abroad in order to “illuminate the reality of Castro’s Cuba.” (The full

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<sup>11</sup> “President Bush Announced Initiative for a New Cuba,” Remarks by the President on Cuba Policy Review, White House, May 20, 2002.

<sup>12</sup> Presidential Proclamation 7757 of February 26, 2004, *Federal Register*, March 1, 2004, p. 9515; Carol Rosenberg, “New Rule Restricts American Boaters from Sailing to Island,” *Miami Herald*, February 27, 2004.

<sup>13</sup> U.S. Department of State, International Information Programs, Washington File, “U.S. to Deny Visas to Cubans Who Took Part in Dissident Trials,” March 18, 2004; Nancy San Martin, “U.S. Bans Anti-Dissidents: The United States Will Deny Entry to 300 Cubans Identified by the States as Cuban Regime Authorities Who Are Involved in Acts of Repression,” *Miami Herald*, March 20, 2004.

Commission report is on the State Department website at [<http://www.state.gov/p/wha/rt/cuba/commission/2004/>.]

The report's most significant recommendations included a number of measures to tighten economic sanctions on family visits and other categories of travel and on private humanitarian assistance in the form of remittances and gift parcels. The Treasury Department issued regulations on June 16, 2004, implementing the tightened restrictions on travel and remittances, most of which went into effect on June 30, 2004. The Commerce Department issued regulations on June 22, 2004, regarding gift parcels and weight limits on luggage allowed for family visits; these restrictions went into effect June 30, 2004. (For more information, see *Travel and Remittance Restrictions* below and CRS Report RL31139, *Cuba: U.S. Restrictions on Travel and Remittances*.)

## Issues in U.S.-Cuban Relations

### Debate on the Overall Direction of U.S. Policy

Over the years, although U.S. policymakers have agreed on the overall objective of U.S. policy toward Cuba — to help bring democracy and respect for human rights to the island — there have been several schools of thought about how to achieve that objective. Some advocate a policy of keeping maximum pressure on the Cuban government until reforms are enacted, while continuing current U.S. efforts to support the Cuban people. Others argue for an approach, sometimes referred to as constructive engagement, that would lift some U.S. sanctions that they believe are hurting the Cuban people, and move toward engaging Cuba in dialogue. Still others call for a swift normalization of U.S.-Cuban relations by lifting the U.S. embargo.

In general, those advocating a loosening of the sanctions-based policy toward Cuba make several policy arguments. They assert that if the United States moderated its policy toward Cuba — through increased travel, trade, and diplomatic dialogue— that the seeds of reform would be planted in Cuba, which would stimulate and strengthen forces for peaceful change on the island. They stress the importance to the United States of avoiding violent change in Cuba, with the prospect of a mass exodus to the United States and the potential of involving the United States in a civil war scenario. They argue that since Castro's demise does not appear imminent, the United States should espouse a more realistic approach in trying to induce change in Cuba. Supporters of changing policy also point to broad international support for lifting the U.S. embargo, to the missed opportunities to U.S. businesses because of the embargo, and to the increased suffering of the Cuban people because of the embargo. Proponents of change also argue that the United States should be consistent in its policies with the world's few remaining communist governments, including China, and also maintain that moderating policy will help advance human rights.

On the other side, opponents of changing U.S. policy maintain that the current two-track policy of isolating Cuba, but reaching out to the Cuban people through measures of support, is the best means for realizing political change in Cuba. They

point out that the Cuban Liberty and Democratic Solidarity Act of 1996 sets forth a road map of the steps Cuba that needs to take in order for the United States to normalize relations, including lifting the embargo. They argue that softening U.S. policy at this time without concrete Cuban reforms would boost the Castro regime politically and economically, and facilitate the survival of the communist regime. Opponents of softening U.S. policy argue that the United States should stay the course in its commitment to democracy and human rights in Cuba; that sustained sanctions can work; and that the sanctions against Cuba have only come to full impact with the loss of large subsidies from the former Soviet bloc. Opponents of loosening U.S. sanctions further argue that Cuba's failed economic policies, not the U.S. embargo, are the causes of the economy's rapid decline.

## Helms/Burton Legislation

**Major Provisions and Implementation.** The Cuban Liberty and Democratic Solidarity Act (P.L. 104-114) was enacted into law on March 12, 1996. **Title I, Section 102(h)**, codifies all existing Cuban embargo executive orders and regulations. No presidential waiver is provided for any of these codified embargo provisions. This provision is significant because of the long-lasting effect on U.S. policy options toward Cuba. In effect, the executive branch is circumscribed in any lifting of the embargo until certain democratic conditions are met.

**Title III**, controversial because of the ramifications for U.S. relations with countries investing in Cuba, allows U.S. nationals to sue for money damages in U.S. federal court those persons who traffic in property confiscated in Cuba. It extends the right to sue to Cuban Americans who became U.S. citizens after their properties were confiscated. The President has authority to delay implementation for six months at a time if he determines that such a delay would be in the national interest and would expedite a transition to democracy in Cuba.

Beginning in July 1996, President Clinton used this provision to delay for six months the right of individuals to file suit against those persons benefitting from confiscated U.S. property in Cuba. At the time of the first suspension on July 16, 1996, the President announced that he would allow Title III to go into effect, and as a result liability for trafficking under the title became effective on November 1, 1996. According to the Clinton Administration, this put foreign companies in Cuba on notice that they face prospects of future lawsuits and significant liability in the United States. At the second suspension on January 3, 1997, President Clinton stated that he would continue to suspend the right to file law suits "as long as America's friends and allies continued their stepped-up efforts to promote a transition to democracy in Cuba." He continued, thereafter, at six-month intervals, to suspend the rights to file Title III lawsuits.

President Bush has continued to suspend implementation of Title III at six-month intervals, most recently on July 16, 2004. When President Bush first used his authority to suspend Title III implementation in July 2001, he cited efforts by European countries and other U.S. allies to push for democratic change in Cuba. In testimony before the House Government Reform Committee's Subcommittee on Human Rights and Wellness on October 16, 2003, Assistant Secretary of State Roger Noriega justified the continued suspension of Title III implementation by noting

numerous examples of countries condemning Cuba for its human rights crackdown in 2003.

**Title IV** of the law denies admission to the United States to aliens involved in the confiscation of U.S. property in Cuba or in the trafficking of confiscated U.S. property in Cuba. This includes corporate officers, principals, or shareholders with a controlling interest in an entity involved in the confiscation of U.S. property or trafficking of U.S. property. It also includes the spouse, minor child, or agent of aliens who would be excludable under the provision. This provision is mandatory, and only waiveable on a case-by-case basis for travel to the United States for humanitarian medical reasons or for individuals to defend themselves in legal actions regarding confiscated property.

To date the State Department has banned from the United States a number of executives and their families from three companies because of their investment in confiscated U.S. property in Cuba: Grupos Domos, a Mexican telecommunications company; Sherritt International, a Canadian mining company; and BM Group, an Israeli-owned citrus company. In 1997, Grupos Domos disinvested from U.S.-claimed property in Cuba, and as a result its executives are again eligible to enter the United States. Action against executives of STET, an Italian telecommunications company was averted by a July 1997 agreement in which the company agreed to pay the U.S.-based ITT Corporation \$25 million for the use of ITT-claimed property in Cuba for ten years. For several years, the State Department has been investigating a Spanish hotel company, Sol Melia, for allegedly investing in property that was confiscated from U.S. citizens in Cuba's Holguin province in 1961. Press reports in March 2002, indicated that a settlement was likely between Sol Melia and the original owners of the property, but by the end of the year settlement efforts had failed.<sup>14</sup> In mid-June 2004, Jamaica's SuperClubs resort chain decided to disinvest from two Cuban hotels. The State Department had written to the hotel chain in May advising that its top officials could be denied U.S. entry because the company's Cuban investments involved confiscated U.S. property.

**Foreign Reaction and the EU's WTO Challenge.** Many U.S. allies — including Canada, Japan, Mexico, and European Union (EU) nations — strongly criticized the enactment of the Cuban Liberty and Democratic Solidarity Act. They maintain that the law's provisions allowing foreign persons to be sued in U.S. court constitute an extraterritorial application of U.S. law that is contrary to international principles. U.S. officials maintain that the United States, which reserves the right to protect its security interests, is well within its rights under NAFTA and the World Trade Organization (WTO).

Until mid-April 1997, the EU had been pursuing a case at the WTO, in which it was challenging the Helms/Burton legislation as an extraterritorial application of U.S. law. The beginning of a settlement on the issue occurred on April 11, 1997, when an EU-U.S. understanding was reached. In the understanding, both sides

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<sup>14</sup> "April Likely to Mark Beginning of Epic Battle Over Cuba Policy Between White House, Congress," *Cuba Trader*, March 11, 2002, p. 2-3; "Congress Expected to Make New Push for Title IV Enforcement after Settlement Fails," *Cuba Trader*, December 9, 2002.

agreed to continue efforts to promote democracy in Cuba and to work together to develop an agreement on agreed disciplines and principles for the strengthening of investment protection relating to the confiscation of property by Cuba and other governments. As part of the understanding, the EU agreed that it would suspend its WTO dispute settlement case. Subsequently in mid-April 1998, the EU agreed to let its WTO challenge expire.

Talks between the United States and the European Union on investment disciplines proved difficult, with the European Union wanting to cover only future investments and the United States wanting to cover past expropriations, especially in Cuba. Nevertheless, after months of negotiations, the European Union and the United States reached a second understanding on May 18, 1998. The understanding set forth EU disciplines regarding investment in expropriated properties worldwide, in exchange for the Clinton Administration's obtaining a waiver from Congress for the legislation's Title IV visa restrictions. Under the understanding, future investment in expropriated property would be barred. For past illegal expropriations, government support or assistance for transactions related to those expropriated properties would be denied. A Registry of Claims would also be established to warn investors and government agencies providing investment support that a property has a record of claims. These investment disciplines were to be applied at the same time that the President's Title IV waiver authority was exercised.

Reaction was mixed among Members of Congress to the EU-U.S. accord, but opposition to the agreement by several senior Members has forestalled any amendment of Title IV in Congress. The Bush Administration initially indicated that the Administration was looking into the possibilities of legislation to enact a presidential waiver for the provision, but during the June 2001 U.S.-EU summit, President Bush noted the difficulty of persuading Congress to amend the law.<sup>15</sup> In July 2003, some press reports indicated that the Administration was considering an arrangement with the EU in which the EU would take a stronger policy stance toward Cuba in exchange for the Administration securing waiver authority for Title IV and permanent waiver authority for Title III of the Helms/Burton legislation.<sup>16</sup>

## **Section 211 Trademark Provision<sup>17</sup>**

Another European Union challenge of U.S. law regarding Cuba in the World Trade Organization involves a dispute between the French spirits company, Pernod Ricard, and the Bermuda-based Bacardi Ltd. Pernod Ricard entered into a joint venture with the Cuban government to produce and export Havana Club rum, but Bacardi maintains that it holds the right to the Havana Club name. A provision in the FY1999 omnibus appropriations measure (Section 211 of Division A, title II, P.L. 105-277, signed into law October 21, 1998) prevents the United States from

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<sup>15</sup> "EU, U.S. Take Sharply Different Tacks on Dispute Resolution," *Inside U.S. Trade*, June 22, 2001.

<sup>16</sup> "Is the US After a Helms-Burton Solution?" *Cuba Trader*, July 14, 2003.

<sup>17</sup> For additional information, see CRS Report RS21764, *Restricting Trademark Rights of Cubans: WTO Decision and Congressional Response*, by Margaret Mikyung Lee.

accepting payment for trademark registrations and renewals from Cuban or foreign nationals that were used in connection with a business or assets in Cuba that were confiscated unless the original owner of the trademark has consented. The provision prohibits U.S. courts from recognizing such trademarks without the consent of the original owner. Although Pernod Ricard cannot market Havana Club in the United States because of the trade embargo, it wants to protect its future distribution rights should the embargo be lifted.

After Bacardi began selling rum in the United States under the Havana Club label, Pernod Ricard's joint venture unsuccessfully challenged Bacardi in U.S. federal court. In February 2000, the U.S. Court of Appeals for the Second Circuit in New York upheld a lower court's ruling that the joint venture had no legal right to use the Havana Club name in the United States and also that it was barred from recognizing any assertion of treaty rights with regard to the trade name.

After formal U.S.-EU consultations on the issue were held in 1999 without resolution, the EU initiated WTO dispute settlement proceedings in June 2000, maintaining that the U.S. law violates the Agreement on Trade-Related Aspects of Intellectual Property (TRIPS). An August 6, 2001 ruling by the WTO panel was described as mixed, with both sides claiming a partial victory. The panel ruled that WTO rules on intellectual property rights did not cover trade names, but also ruled that a portion of the law (Section 211(a)(2)) prohibiting U.S. courts from recognizing such Cuban trademarks based on common law rights or registration is in violation of the TRIPS because it denies access to U.S. courts by trademark holders.

In early October 2001, the EU formally notified the WTO that it was appealing the ruling. The WTO appeals panel issued its ruling on January 2, 2002, and again the ruling was described as mixed. According to the United States Trade Representative (USTR), the appellate panel upheld the "U.S. position that WTO intellectual property rights rules leave WTO members free to protect trademarks by establishing their own trademark ownership criteria" and overturned the earlier ruling that Section 211 was in violation of TRIPs because it denied access to U.S. courts by trademark holders.<sup>18</sup> However, the appellate panel also found that Section 211 violated WTO provisions on national treatment and most-favored-nation treatment, which could require the United States to amend Section 211 so that it does not violate WTO rules. Although there is access to courts to enforce trademark rights, Section 211 restricted access in a discriminatory manner (against Cuban nationals and foreign successors-in-interest).

On March 28, 2002, the United States agreed that it would come into compliance with the WTO ruling through legislative action by Congress by January 3, 2003.<sup>19</sup> That deadline has been extended several times, however, since no legislative action has been taken to bring Section 211 into compliance with the WTO

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<sup>18</sup> United States Trade Representative, "WTO Issues Report Upholding Key Aspects of U.S. Law in Trademark Dispute," Press Release, January 2, 2002.

<sup>19</sup> "U.S., EU Agree on Deadline for Complying with Section 211 WTO Finding," *Inside U.S. Trade*, April 12, 2002.

ruling. Since no action was taken by the end of the 108<sup>th</sup> Congress, the deadline again was extended from December 31, 2004 until June 30, 2005.

Two different approaches have been advocated to bring Section 211 into compliance with the WTO ruling. Some want a narrow fix in which Section 211 would be amended so that it applies to U.S. companies instead of being limited to foreign companies. Advocates of this approach argue that it would affirm that the United States “will not give effect to a claim or right to U.S. property if that claimed is based on a foreign compensation.”<sup>20</sup> Others want Section 211 repealed altogether. They argue that the law endangers over 5,000 trademarks of over 500 U.S. companies registered in Cuba.<sup>21</sup> They maintain that Cuba could retaliate against U.S. companies under the Inter-American Convention for Trademark and Commercial Protection.

In the 108<sup>th</sup> Congress, identical bills, H.R. 2494 (Rangel) and S. 2002 (Baucus), introduced in the first session, would have, among other provisions, repealed the Section 211 trademark provision from law. Press reports in October 2003 had asserted that there were efforts in Congress to advance the narrow fix that would ensure that Section 211 applied to U.S. companies as well as foreign firms.<sup>22</sup> Plans to add such a remedy advocated by Bacardi to the conference report to the Department of Defense authorization measure, H.R. 1588, were reportedly scuttled when it became apparent that there would be some opposition.<sup>23</sup> In the second session, identical bills were introduced — H.R. 4225 (Smith of Texas), and S. 2373 (Domenici) — that would have advanced a technical fix to Section 211 so that it applied to all parties regardless of nationality. The Senate Judiciary Committee held a July 13, 2004, hearing on the Section 211 trademark issue featuring those advocating the narrow fix as advanced by S. 2373 and H.R. 4225, as well as those calling for the repeal of Section 211 as advanced by S. 2002 and H.R. 2494, but no action was taken on any of these measures in the 108<sup>th</sup> Congress.

## Food and Medical Exports

Under U.S. sanctions, commercial medical and food exports to Cuba have been allowed for several years, but with numerous restrictions and licensing requirements. The 106<sup>th</sup> Congress passed the Trade Sanctions Reform and Export Enhancement Act of 2000 (P.L. 106-387, Title IX) that allows for one-year export licenses for shipping food and medicine to Cuba, although no U.S. government assistance, foreign assistance, export assistance, credits, or credit guarantees are available to finance such exports. The law, furthermore, denies exporters access to U.S. private commercial financing or credit; all transactions must be conducted in cash in advance

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<sup>20</sup> Brian Lehman, testimony before the Senate Committee on the Judiciary, hearing on “An Examination of Section 211 of the Omnibus Appropriations Act of 1998,” July 13, 2004.

<sup>21</sup> “USA-Engage Joins Cuba Fight,” *Cuba Trader*, April 1, 2002.

<sup>22</sup> “House, Senate Conferees Consider Changes to Section 211 Trademark Law,” *Inside U.S. Trade*, October 3, 2003; “Section 211 Fix Revealed in Draft Proposal,” *Cuba Trader*, October 6, 2003; “Delay Pours It On for Bacardi,” *Roll Call*, October 1, 2003.

<sup>23</sup> “Language Amending Section 211 Dropped from DOD Authorization,” *Inside U.S. Trade*, November 14, 2003.

or with financing from third countries. The law reiterates the existing ban on importing goods from Cuba but authorizes travel to Cuba, under a specific license, to conduct business related to the newly allowed food and medicine sales. Regulations implementing the new provisions were published in the *Federal Register* on July 12, 2001.

Since late 2001, Cuba has purchased more than \$700 million in agricultural products from the United States. Overall U.S. exports to Cuba amounted to \$7.1 million in 2001, \$145.6 million in 2002, and \$259 million in 2003, the majority in agricultural products. For the first ten months of 2004, U.S. exports amounted to about \$341 million, the majority in agricultural products.<sup>24</sup>

In a recent restriction, on November 12, 2004, the Treasury Department's Office of Foreign Assets Control instructed U.S. banks to stop transfers of funds to U.S. companies for sales of agricultural and medical products to Cuba. The temporary move was taken so that OFAC could examine whether there were any violations of the provisions of the Trade Sanctions Reform and Export Enhancement Act of 2000, which requires that the sales be conducted in "payment of cash in advance." Some observers believe that the action could jeopardize millions of dollars in U.S. agricultural sales to Cuba. There has been significant opposition to OFAC's action by U.S. agricultural exporters and some Members of Congress.

Some groups favor further easing restrictions on food and medical exports to Cuba. They argue that the restrictions harm the health and nutrition of the Cuban population. Some believe the embargo plays into Castro's hands by allowing him to use U.S. policy as a scapegoat for his failed economic policies and as a rationale for political repression. U.S. agribusiness companies that support the removal of restrictions on agricultural exports to Cuba believe that U.S. farmers are missing out on a market of over \$700 million annually so close to the United States. Some exporters want to change U.S. restrictions so that they can sell agriculture and farm equipment to Cuba.<sup>25</sup> Some agricultural exporters who support the lifting of the prohibition on financing contend that allowing such financing would help smaller U.S. companies expand purchases to Cuba more rapidly.<sup>26</sup>

Opponents of further easing restrictions on food and medical exports to Cuba maintain that U.S. policy does not deny such sales to Cuba, as evidenced by the large amount of sales since 2001. Moreover, according to the State Department, since the Cuban Democracy Act was enacted in 1992, the United States has licensed billions of dollars in private humanitarian donations. Opponents further argue that easing pressure on the Cuban government would in effect be lending support and extending the duration of the Castro regime. They maintain that the United States should remain steadfast in its opposition to any easing of pressure on Cuba that could

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<sup>24</sup> World Trade Atlas. Department of Commerce Statistics.

<sup>25</sup> "Ag Groups Split Over Trade With Cuba," *Congress Daily AM*, National Journal, February 11, 2003.

<sup>26</sup> "Farm Equipment Exports Likely to Face Tough Opposition from White House, Congress," *Cuba Trader*, Vol. III, No. 7, February 17, 2003.

prolong the Castro regime and its repressive policies. Some agricultural producers that export to Cuba support continuation of the prohibition on financing for agricultural exports to Cuba because it ensures that they will be paid.

**Legislative Initiatives.** In the 108<sup>th</sup> Congress, several appropriations measures had provisions that would have eased sanctions related to the export of food and medical goods, but none of these provisions were enacted into law. The Senate version of the FY2004 agriculture appropriations bill, H.R. 2673, included a provision that would have allowed travel to Cuba under a general license (without applying to the Treasury Department) for travel related to commercial sales of agricultural and medical goods, but the provision was dropped in the conference report to the bill (H.Rept. 108-401). Again for FY2005, the Senate version of the agriculture appropriations bill, S. 2803, as reported out of the Appropriations Committee (S.Rept. 108-340), included a provision that would have allowed travel to Cuba under a general license for travel related to commercial sales of agricultural and medical goods, but the provision was dropped in the FY2005 omnibus appropriations measure (P.L. 108-447, H.Rept. 108-792).

In other legislative action, the House-passed version of the Transportation/Treasury appropriations bill, H.R. 5025, had a provision that would have prohibited funds from being used to implement any sanction on private commercial sales of agricultural or medical commodities. The Senate version, S. 2806, as reported out of the Appropriations Committee (S.Rept. 108-342), had a provision that would have prohibited funds from administering or enforcing restrictions on travel or travel-related restrictions, which would include travel related to commercial sales of agricultural and medical goods. The Cuba provisions from both the House and Senate versions were dropped in the FY2005 omnibus appropriations measure (P.L. 108-447, H.Rept. 108-792).

## **Travel and Private Humanitarian Assistance Restrictions**

Restrictions on travel to Cuba have been a key and often contentious component of U.S. efforts to isolate the communist government of Fidel Castro for much of the past 40 years. Over time there have been numerous changes to the restrictions and for five years, from 1977 until 1982, there were no restrictions on travel. Restrictions on travel and remittances to Cuba are part of the Cuban Assets Control Regulations (CACR), the overall embargo regulations administered by the Treasury Department's Office of Foreign Assets Control (OFAC).

Under the Bush Administration, enforcement of U.S. restrictions on Cuba travel has increased, and restrictions on travel and on private remittances to Cuba have been tightened. In March 2003, the Administration eliminated travel for people-to-people educational exchanges unrelated to academic course work. In June 2004, the Administration significantly restricted travel, especially family travel, and the provision of private humanitarian assistance to Cuba in the form of remittances and gift parcels.

Among the new restrictions:

- Family visits are restricted to one trip every three years under a specific license and are restricted to immediate family members. Under previous regulations, family visits could occur once a year under a general license, with travel more than once a year allowed but under a specific license. Previously travel had been allowed to visit relatives to within three degrees of relationship to the traveler.
- Cash remittances, estimates of which range from \$400 million to \$800 million, are further restricted. Quarterly remittances of \$300 may still be sent, but it is now restricted to members of the remitter's immediate family and may not be remitted to certain government officials and certain members of the Cuban Communist Party. The regulations were also changed to reduce the amount of remittances that authorized travelers may carry to Cuba, from \$3000 to \$300.
- Gift parcels are limited to immediate family members and are denied to certain Cuban officials and certain members of the Cuban Communist Party. The contents of gift parcels may no longer include seeds, clothing, personal hygiene items, veterinary medicines and supplies, fishing equipment and supplies, and soap-making equipment.
- The authorized per diem allowed for a family visit is reduced from the State Department per diem rate, currently \$167 per day, to \$50 per day.
- With the exception of informational materials, licensed travelers may not purchase or otherwise acquire merchandise and bring it back into the United States. Previous regulations allowed visitors to Cuba to import \$100 worth of goods as accompanied baggage.
- Fully-hosted travel is no longer allowed as a permissible category of travel.
- Travel for educational activities is further restricted, including the elimination of educational exchanges sponsored by secondary schools.

There has been mixed reaction to the tightening of Cuba travel and remittance restrictions. Supporters maintain that the increased restrictions will deny the Cuban government dollars that help maintain its repressive control. Opponents argue that the tightened sanctions are anti-family and will only result in more suffering for the Cuban people. There have also been concerns that the new restrictions were drafted without considering the full consequences of their implementation. For example, the elimination of fully-hosted travel raised concerns about the status of 70 U.S. students receiving full scholarships at the Latin American School of Medicine in Havana. Members of the Congressional Black Caucus, who were instrumental in the establishment of the scholarship program for U.S. students, expressed concern that

the students may be forced to abandon their medical education because of the new OFAC regulations. As a result of these concerns, OFAC ultimately licensed the medical students in August 2004 to continue their studies for a period of two years and engage in travel-related transactions.

Major arguments made for lifting the Cuba travel ban are that it contributes to the suffering of Cuban families; it hinders efforts to influence conditions in Cuba and may be aiding Castro by helping restrict the flow of information; it abridges the rights of ordinary Americans; and Americans can travel to other countries with communist or authoritarian governments. Major arguments in opposition to lifting the Cuba travel ban are that more American travel would support Castro's rule by providing his government with millions of dollars in hard currency; that there are legal provisions allowing travel to Cuba for humanitarian purposes that are used by thousands of Americans each year; and that the President should be free to restrict travel for foreign policy reasons.

**Legislative Initiatives.** In the first session of the 108<sup>th</sup> Congress, both the House- and Senate-approved versions of the FY2004 Transportation-Treasury appropriations bill, H.R. 2989, had a nearly identical provision (Section 745 in the House version and Section 643 in the Senate version) that would have prevented funds from being used to administer or enforce restrictions on travel or travel-related transactions. But the provision was dropped in the conference report to the FY2004 Consolidated Appropriations Act, H.R. 2673 (H.Rept. 108-401), which incorporated seven regular appropriations acts, including Transportation-Treasury appropriations. The White House had threatened to veto any legislation that weakened economic sanctions against Cuba. The conference also dropped two Cuba provisions from the House version of H.R. 2989 on remittances (Section 746) and on people-to-people educational exchanges (Section 749).

In the second session of the 108<sup>th</sup> Congress, several FY2005 appropriations bills — Commerce, Justice, and State; Transportation/Treasury; and Agriculture — had provisions that would have eased Cuba travel restrictions in several ways, but none of these provision made it into the FY2005 omnibus appropriations measure (P.L. 108-447, H.Rept. 108-792).

(For further information, including details on legislative action since the 106<sup>th</sup> Congress, see CRS Report RL31139, *Cuba: U.S. Restrictions on Travel and Remittances*, by Mark P. Sullivan.)

## Drug Interdiction Cooperation

Because of Cuba's geographic location, the country's waters and airspace have been used by illicit narcotics traffickers to transport drugs for ultimate destinations in the United States. Over the past several years, Cuban officials have expressed concerns over the use of their waters and airspace for drug transit as well as increased domestic drug use. The Cuban government has taken a number of measures to deal with the drug problem, including legislation to stiffen penalties for traffickers, increased training for counternarcotics personnel, and cooperation with a number of countries on anti-drug efforts. Cuba has bilateral counternarcotics agreements with 29 countries and less formal arrangements with 12 others, according to the

Department of State. Britain and France have provided counternarcotics training. In November 2001, Cuba hosted a regional counternarcotics conference focusing on strategies to prevent drug abuse, drug trafficking, and money laundering.

There has been a mixed record of cooperation with Cuba on anti-drug efforts. In 1996, Cuban authorities cooperated with the United States in the seizure of 6.6 tons of cocaine aboard the Miami-bound *Limerick*, a Honduran-flag ship. Cuba turned over the cocaine to the United States and cooperated fully in the investigation and subsequent prosecution of two defendants in the case in the United States. Cooperation has increased since 1999 when U.S. and Cuban officials met in Havana to discuss ways of improving anti-drug cooperation. Cuba accepted an upgrading of the communications link between the Cuban Border Guard and the U.S. Coast Guard as well as the stationing of a U.S. Coast Guard Drug Interdiction Specialist (DIS) at the U.S. Interests Section in Havana.

The Coast Guard official was posted to the U.S. Interests Section in September 2000, and since that time, coordination has increased somewhat. The State Department, in its March 2004 International Narcotics Control Strategy Report, maintains that there has been some Cuban cooperation with the Coast Guard specialist, but only after U.S. insistence that he either be used effectively or he would be withdrawn. The report also noted that the Coast Guard official had been subjected to diplomatically unacceptable harassment.

In addition, the State Department appeared to be more critical of Cuba in the March 2004 drug strategy report than in previous years. According to the report: "Cuban authorities have chosen not to provide an effective use of force policy and adequate resources to counternarcotics authorities to give them more than a limited ability to interdict go-fast vessels or aircraft." Nevertheless, the report maintained that Cuba did provide the U.S. Coast Guard and Drug Enforcement Administration with information on suspect aircraft and go-fast vessels that resulted in U.S. drug seizures and arrests.

In the past, Cuba has called for a bilateral anti-drug cooperation agreement with the United States.<sup>27</sup> In January 2002, Cuba deported to the United States Jesse James Bell, a U.S. fugitive wanted on drug charges, and in early March 2002, Cuba arrested a convicted Colombian drug trafficker, Rafael Bustamante, who escaped from jail in Alabama in 1992. At the time, while Drug Enforcement Administration head Asa Hutchison expressed appreciation for Cuba's actions, he indicated that cooperation would continue on a case-by-case basis, not through a bilateral agreement.<sup>28</sup> State Department spokesman Richard Boucher said that if Cuba "were to demonstrate a

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<sup>27</sup> On March 12, 2002, Cuba's Ministry of Foreign Affairs and the Cuban Interests Section in Washington delivered three diplomatic notes to the U.S. Interests Section in Havana and the State Department in Washington proposing agreements on drug interdiction, terrorism, and migration issues. See "Statement from the Ministry of Foreign Affairs: Prominent Drug Trafficker Arrested in our Country," Information Office, Cuban Interests Section, March 17, 2002.

<sup>28</sup> Anthony Boadle, "U.S. Thanks Cuba, But Declines Anti-Drug Accord," *Reuters*, March 19, 2002.

willingness to work across the board with us on law enforcement issues, then we might consider some more formal structure,” but he indicated that Cuba has not demonstrated that kind of commitment. As an example, Boucher maintained that “there are still dozens of fugitives from U.S. justice who have been provided safe haven by the Cuban government.”<sup>29</sup>

**Legislative Initiatives.** The House-passed version of the FY2005 Foreign Operations measure, H.R. 4818, included a provision, in Section 572, that no International Narcotics Control and Law Enforcement Funds be made available for assistance to Cuba. In contrast, following the pattern of the past several years, the Senate-passed version of the bill would have provided (Sec. 5091) \$5 million to establish cooperation with appropriate agencies of the Cuban government on counter-narcotics matters. The money would not be available if the President certified that Cuba did not have in place appropriate procedures to protect against the loss of innocent life in the air and on the ground in connection with the interdiction of illegal drugs and there was evidence of involvement of the Cuban government in drug trafficking. Ultimately, neither provision was included in the FY2005 omnibus appropriations measure (P.L. 108-447, H.Rept. 108-792).

## **Cuba and Terrorism<sup>30</sup>**

Cuba was added to the State Department’s list of states sponsoring international terrorism in 1982 because of its alleged ties to international terrorism and its support for terrorist groups in Latin America. Cuba had a long history of supporting revolutionary movements and governments in Latin America and Africa, but in 1992, Fidel Castro said that his country’s support for insurgents abroad was a thing of the past. Cuba’s change in policy was in large part because of the breakup of the Soviet Union, which resulted in the loss of billions of dollars in annual subsidies to Cuba, and led to substantial Cuban economic decline.

Cuba remains on the State Department’s terrorism list. According to the State Department’s April 2004, *Patterns of Global Terrorism* report, while Cuba ratified all 12 international counterterrorism conventions in 2001, it has remained opposed to the U.S.-led global coalition against terrorism and “actively condemned many associated U.S. policies and actions throughout 2003.”

The State Department report also noted that Cuba continued to host several members of Foreign Terrorist Organizations as well as some U.S. fugitives from justice. The report maintained that Cuba provides safehaven to up to 20 Basque ETA terrorists from Spain and has provided “some degree of safehaven and support” to members of two Colombian insurgent groups, the Revolutionary Armed Forces of Colombia (FARC) and the National Liberation Army (ELN). The report acknowledged, however, that Colombia acquiesced to having the two groups in Cuba; it also noted that Colombia has publicly said that it wants Cuba’s continued mediation with the ELN in Cuba. With regard to the ETA members, the report cited

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<sup>29</sup> U.S. Department of State, State Department Regular Briefing, March 19, 2002.

<sup>30</sup> For further information, see CRS Report RL32251, *Cuba and the State Sponsors of Terrorism List*, by Mark P. Sullivan.

a Cuban declaration in May 2003 that maintained that the ETA presence in Cuba stemmed from a request from Spain and Panama and that the issue is a bilateral matter between Cuba and Spain.

In general, those who support keeping Cuba on the terrorism list argue that there is ample evidence that Cuba supports terrorism. They point to the government's history of supporting terrorist acts and armed insurgencies in Latin America and Africa. They point to the government's continued hosting of members of foreign terrorist organizations and U.S. fugitives from justice. Critics of retaining Cuba on the terrorism list maintain that it is a holdover from the Cold War. They argue that domestic political considerations keep Cuba on the terrorism list and maintain that Cuba's presence on the list diverts U.S. attention from struggles against serious terrorist threats.

Although Cuba offered support to the United States in the aftermath of the World Trade Center and Pentagon attacks in 2001, Fidel Castro also stated that the attacks were in part a consequence of the United States having applied "terrorist methods" for years.<sup>31</sup> Cuba's subsequent statements became increasingly hostile, according to press reports, which quoted Cuba's mission to the United Nations as describing the U.S. response to the U.S. attacks as "fascist and terrorist" and that the United States was using the attack as an excuse to establish "unrestricted tyranny over all people on Earth."<sup>32</sup> Castro himself said that the U.S. government was run by "extremists" and "hawks" whose response to the attack could result in an "infinite killing of innocent people."<sup>33</sup>

The Cuban government, however, had a much more muted reaction to the U.S. decision to send captured Taliban and Al Qaeda fighters from Afghanistan to the U.S. naval base at Guantanamo Bay, Cuba. Although the Cuban government objects to the U.S. presence at Guantanamo as a national security threat and opposes the presence as illegal, it has not opposed the new mission of housing detainees from Afghanistan.<sup>34</sup> The Cuban government has, however, expressed concerns about the treatment of terrorist suspects at Guantanamo. (Also see "Guantanamo Naval Base" below.)

**Cuba and Biological Weapons?** In 2002, the State Department made controversial allegations that Cuba, which has an advanced biotechnology sector, has been involved in developing biological weapons. On May 6, 2002, Under Secretary of State for Arms Control and International Security John Bolton stated that "the United States believes that Cuba has at least a limited offensive biological warfare research-and-development effort" and "has provided dual-use technology to other

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<sup>31</sup> Andrew Cawthorne, "Cuba's Castro Urges U.S. to Keep Calm," Reuters, September 11, 2001.

<sup>32</sup> Kevin Sullivan, "Castro Warns About U.S. Military Plans," *Washington Post*, September 23, 2001, p. A38.

<sup>33</sup> *Ibid.*

<sup>34</sup> For more information, see CRS Report RL31367, *Treatment of "Battlefield Detainees" in the War on Terrorism*, by Jennifer Elsea.

rogue states.” Bolton called on Cuba “to cease all BW-applicable cooperation with rogue states and to fully comply with all of its obligations under the Biological Weapons Convention.” Although Bolton’s statement received considerable media attention, it was similar to a March 19, 2002 statement by Assistant Secretary of State for Intelligence and Research Carl Ford before the Senate Committee on Foreign Relations.

When questioned on the issue, Secretary of State Powell maintained that Under Secretary Bolton’s statement was not based on new information. Powell asserted that the United States believes Cuba has the capacity and the capability to conduct research on biological weapons but emphasized that the Administration had not claimed that Cuba had such weapons. Some observers viewed Powell’s statement as contradicting that of Under Secretary Bolton.<sup>35</sup>

In response to Under Secretary Bolton’s statement, the Cuban government called the allegations a lie and maintained that the Bush Administration was trying to justify its hard-line policies just when the momentum is increasing in the United States to ease the embargo. During his trip to Cuba, former President Jimmy Carter criticized the Bush Administration for the allegations and said that Administration officials who had briefed him before the trip assured him that Cuba had not shared anything with other countries that could be used for terrorist purposes.<sup>36</sup>

The Senate Foreign Relations Committee’s Subcommittee on Western Hemisphere, Peace Corps, and Narcotics Affairs held a hearing on the issue on June 5, 2002.<sup>37</sup> At the hearing, Assistant Secretary of State for Intelligence and Research Carl Ford distinguished between the term “effort” and “program,” and maintained that Cuba has a biological weapons effort and not a biological weapons program. Ford characterized a program as something substantial and multifaceted that includes test facilities, production facilities, and a unit within the military specifically designated for such weapons capability. In contrast, he characterized an effort as the research and development that would be necessary to create biological weapons.

In late June 2003, news reports stated that an employee of the State Department’s Bureau of Intelligence and Research maintained that Undersecretary Bolton’s assertions about Cuba and biological weapons were not supported by sufficient intelligence.<sup>38</sup>

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<sup>35</sup> David Gonzalez, “Carter and Powell Cast Doubt on Bioarms in Cuba,” *New York Times*, May 14, 2002.

<sup>36</sup> Kevin Sullivan, “Carter Says He Was Told U.S. Had No Proof Cuba Shared Bioweapons Data,” *Washington Post*, May 14, 2002, p. 14.

<sup>37</sup> U.S. Congress. Senate Committee on Foreign Relations. Subcommittee on Western Hemisphere, Peace Corps and Narcotics Affairs. Cuba’s Pursuit of Biological Weapons: Fact or Fiction? 107<sup>th</sup> Congress, June 5, 2002. S.Hrg. 107-736.

<sup>38</sup> James Risen and Douglas Jehl, “Expert Said to Tell Legislators He Was Pressed to Distort Some Evidence,” *New York Times*, June 25, 2003.

U.S. government concerns about Cuba's capability to produce biological weapons date back several years. In 1998, then U.S. Secretary of Defense William Cohen stated in a transmittal letter (accompanying a report to Congress on Cuba's threat to U.S. national security) that he was "concerned about Cuba's potential to develop and produce biological agents, given its biotechnology infrastructure..."<sup>39</sup>

Cuba began building up its biotechnology industry in the 1980s and has spent millions investing in the sector. The industry was initially geared "to apply biotechnology and genetic engineering to agriculture in order to increase yields" but has also produced numerous vaccines, interferon, and other drugs and has exported many of its biotechnology products.<sup>40</sup> In 1999, the British pharmaceutical company GlaxoSmithKline announced an agreement to test and market a new Cuban meningitis vaccine that might eventually be used in the United States.<sup>41</sup> In May 2003, the Center for Defense Information published a report on a delegation sent to Cuba that visited nine Cuban biotechnology facilities.<sup>42</sup>

In March 30, 2004, congressional testimony before the House International Relations Committee, Under Secretary of State John Bolton asserted that "Cuba remains a terrorist and BW threat to the United States." According to Bolton: "The Bush Administration has said repeatedly that we are concerned that Cuba is developing a limited biological weapons effort, and called on Fidel Castro to cease his BW aspirations and support of terrorism." Bolton went on to add a caveat, however, that "existing intelligence reporting is problematic, and the Intelligence Community's ability to determine the scope, nature, and effectiveness of any Cuban BW program has been hampered by reporting from sources of questionable access, reliability, and motivation."<sup>43</sup> The *New York Times* reported on September 18, 2004 that the Bush Administration, using more stringent intelligence standards, had "concluded that it is no longer clear that Cuba has an active, offensive bio-weapons program."<sup>44</sup>

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<sup>39</sup> United States Information Agency, "Text: Defense Secretary's Letter to Thurmond on Cuban Threat," May 6, 1998.

<sup>40</sup> Teo A. Babun, Jr., "A Business Guide to Cuba," *CubaNews*, Miami Herald Publishing Company, 1996, pp. 66-67.

<sup>41</sup> Michael Kranish, "Biotechnology; Incubating Biotech Cuba Becomes Biotech Hotbed," *Boston Globe*, May 15, 2002, p. D1.

<sup>42</sup> Glenn Baker, ed. *Cuban Biotechnology, A First-Hand Report*, Center for Defense Information, Washington, D.C. May 2003. 50 p.

<sup>43</sup> House International Relations Committee, "The Bush Administration and Nonproliferation: A New Strategy Emerges," Hearing, March 30, 2004. *Federal News Service*.

<sup>44</sup> Steven R. Weisman, "In Stricter Study, U.S. Scales Back Claim on Cuba Arms," *New York Times*, September 18, 2004.

## Guantanamo Naval Base<sup>45</sup>

The 45-square mile U.S. naval facility at Guantanamo Bay, Cuba, has been a U.S. base since 1903, and under a 1934 treaty that remains in force, the U.S. presence can only be terminated by mutual agreement or by abandonment by the United States. When Fidel Castro assumed power in the 1959 Cuban revolution, the new government gave assurances that it would respect all its treaty commitments, including the 1934 treaty covering the Guantanamo base. Subsequently, however, as U.S.-Cuban relations deteriorated, the Cuban government opposed the presence as illegal.

The mission of the base has changed over time. During the Cold War, the base was viewed as a good location for controlling Caribbean sea lanes, as a deterrent to the Soviet presence in the Caribbean, and as a location for supporting potential military operations in the region. In 1994-1995, the base was used to house thousands of Cubans and Haitians fleeing their homeland, but by 1996 the last of refugees had departed, with most Cubans paroled into the United States, pursuant to a May 1995 U.S.-Cuban migration accord. Since the 1995 accord, the U.S. Coast Guard has interdicted thousands of Cubans at sea and returned them to Cuba, while a much smaller number, those deemed at risk for persecution, have been taken to Guantanamo and then granted asylum in a third country. In the aftermath of increased violence in Haiti in February 2004, the base reportedly was being considered as a contingency option to house Haitian migrants in the event of a mass exodus from Haiti.<sup>46</sup>

Another mission for the Guantanamo base emerged with the U.S.-led global campaign against terrorism in the aftermath of the September 11, 2001, terrorist attacks in the United States. With the U.S. war in Afghanistan in 2001, the United States decided to send captured Taliban and Al Qaeda fighters to be imprisoned in Guantanamo. Although the Cuban government objects to the U.S. presence at Guantanamo, it has not opposed the new mission of housing detainees. Defense Minister Raul Castro noted that, in the unlikely event that a prisoner would escape into Cuban territory, Cuba would capture the prisoner and return him to the base.<sup>47</sup> The Cuban government, however, has expressed concerns about the treatment of prisoners at the U.S. base and has said it will keep pressing the international community to investigate the treatment of terrorist suspects.<sup>48</sup>

With regard to the future of the Guantanamo base, a provision in the Cuban Liberty and Democratic Solidarity Act of 1996 (P.L. 104-114, Section 210), states

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<sup>45</sup> Background information on Guantanamo is drawn from out of print CRS Report 94-701, *Guantanamo Bay Naval Base, Cuba: Background and Current Issues*, by Ronald O'Rourke and Mark P. Sullivan, Sept. 2, 1994; copies available from author, Mark Sullivan at 7-7689.

<sup>46</sup> Jerry Seper, "U.S. Prepares for Haitian Refugees; Guantanamo Could Hold 20,000," *Washington Times*, February 24, 2004.

<sup>47</sup> "Cuba Would Hand Over Escapees, Raul Castro Says," *Miami Herald*, January 20, 2002.

<sup>48</sup> For information on terrorist suspects held at Guantanamo, see CRS Report RL31367, *Treatment of "Battlefield Detainees" in the War on Terrorism*, by Jennifer Elsea.

that once a democratically elected Cuban government is in place, U.S. policy will be to be prepared to enter into negotiations either to return the base to Cuba or to renegotiate the present agreement under mutually agreeable terms.

## Radio and TV Marti

U.S.-government sponsored radio and television broadcasting to Cuba — Radio and TV Marti — began in 1985 and 1990 respectively. As spelled out in the *Broadcasting Board of Governors FY2005 Budget Request*, the objectives of Radio and TV Marti are 1) to support the right of the Cuban people to seek, receive, and impart information and ideas through any media and regardless of frontiers; 2) to be effective in furthering the open communication of information and ideas through use of radio and television broadcasting to Cuba; 3) to serve as a consistently reliable and authoritative source of accurate, objective, and comprehensive news; and 4) to provide news, commentary, and other information about events in Cuba and elsewhere to promote the cause of freedom in Cuba.

TV Marti broadcasts for four and one-half hours daily from facilities in Cudjoe Key, Florida; on May 20, 2002, the broadcast schedule was changed from the early hours of 3:30 a.m. - 8:00 a.m. to the evening hours of 6:00 p.m. - 10:30 p.m. In addition, TV Marti began broadcasting on the Hispasat satellite 24 hours a day in September 2003.

Radio Marti broadcasts 24 hours a day on short and medium wave (AM) channels. Surveys of Cubans have shown a Radio Marti listenership of 9% in 2000 and 5% in 2001.<sup>49</sup> There has been testing of various methods to overcome Cuban jamming efforts.

Until October 1999, U.S.-government funded international broadcasting programs had been a primary function of the United States Information Agency (USIA). When USIA was abolished and its functions were merged into the Department of State at the beginning of FY2000, the Broadcasting Board of Governors became an independent agency that included such entities as the Voice of America (VOA), Radio Free Europe/Radio Liberty (RFE/RL), Radio Free Asia, and the Office of Cuba Broadcasting (OCB), which manages Radio and TV Marti. OCB is headquartered in Miami, Florida. Legislation in the 104<sup>th</sup> Congress (P.L. 104-134) required the relocation of OCB from Washington D.C. to south Florida. The move began in 1996 and was completed in 1998.

Both Radio and TV Marti have at times been the focus of controversies, including questions about adherence to broadcast standards. There have been various attempts over the years to cut funding for the programs, especially for TV Marti, which has not had an audience because of Cuban jamming efforts. Various studies and audits of these programs have been conducted, including investigations by the U.S. General Accounting Office, by a 1994 congressionally established Advisory

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<sup>49</sup> Brian Conniff, Acting Director, International Broadcasting Bureau, Broadcasting Board of Governors, Testimony before the House International Relations Committee, Subcommittee on International Operations and Human Rights, June 6, 2002.

Panel on Radio and TV Marti, and by the State Department's Office of the Inspector General.<sup>50</sup> (For background on Cuba broadcasting through 1994, see CRS Report 94-636, *Radio and Television Broadcasting to Cuba: Background and Issues through 1994*.)

From FY1984 through FY2005, Congress has appropriated about \$487 million for broadcasting to Cuba, with about \$298 million for Radio Marti (since FY1984) and \$189 million for TV Marti (since FY1989).

**Debate on TV Marti.** In the various congressional debates on TV Marti over the years, opponents of continued funding of the program maintain that virtually the only people who see TV Marti in Cuba are those Cubans who visit the consular section of the U.S. Interests Section in Havana, which has a waiting room in which TV Marti may be viewed. These critics argue that almost \$190 million has been spent by the United States for TV Marti, while the Cuban government only needs to spend a few thousand dollars to jam the broadcasts effectively. They argue that TV Marti is a waste of taxpayers' money because it does not contribute to the promotion of freedom and democracy in Cuba, unlike Radio Marti, which some Cubans listen to as a source of information. Opponents also argue that the conversion of TV Marti from VHF to UHF transmission has not succeeded in overcoming Cuba's jamming efforts.

In contrast, supporters of continued TV Marti funding point to a congressionally mandated Advisory Panel in 1994, which stated that "the Cuban people have an ardent desire and a genuine need to receive the programming produced by TV Marti."<sup>51</sup> Supporters argue that eliminating TV Marti would send a message to the Cuban people that the United States is not committed to the cause of freedom in Cuba. They believe that eliminating TV Marti would be giving in to the dictatorial Castro government, which suppresses the free flow of information in Cuba. These proponents contend that it is impossible for the Cuban government to completely jam TV Marti, and maintain that significant numbers of Cubans have attempted to tune in to the programming. Still others point to the potential use of TV Marti in the event of a crisis or upheaval in Cuba's future, and argue that in such a scenario, it would be important to have TV Marti available as a news source.

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<sup>50</sup> See the following reports and audits: U.S. General Accounting Office (GAO), *Broadcasts to Cuba, TV Marti Surveys are Flawed*, GAO/NSIAD-90-252, August 1990; U.S. GAO, *TV Marti, Costs and Compliance with Broadcast Standards and International Agreements*, GAO/NSIAD-92-199, May 1992; U.S. GAO, Letter to Hon. Howard L. Berman and Hon. John F. Kerry regarding Radio Marti broadcast standards, GAO/NSIAD-93-126R, February 17, 1993; Advisory Panel on Radio and TV Marti, *Report of the Advisory Panel on Radio and TV Marti*, Three Volumes, March 1994; U.S. GAO, *Radio Marti, Program Review Processes Need Strengthening*, GAO/NSIAD-94-265, September 1994; U.S. GAO, *U.S. Information Agency, Issues Related to Reinvention Planning in the Office of Cuba Broadcasting*, GAO/NSIAD-96-110, May 1996; and U.S. Department of State, Office of the Inspector General, *Review of Policies and Procedures for Ensuring that Radio Marti Broadcasts Adhere to Applicable Requirements*, 99-IB-010, June 1999.

<sup>51</sup> Advisory Panel on Radio Marti and TV Marti, *Report of the Advisory Panel on Radio Marti and TV Marti*, Executive Summary, March 1994.

**Airborne Broadcasts.** In early May 2004, the Commission for Assistance for a Free Cuba called for the immediate deployment of the EC-130E/J Commando Solo airborne platform for weekly airborne radio and television broadcasts to Cuba in order to overcome Cuban jamming. It also called for funds “to acquire and refit a dedicated airborne platform for full-time transmission of Radio and TV Marti into Cuba.” In support of these recommendations, President Bush directed that up to \$18 million be committed “for regular airborne broadcasts to Cuba and the purchase of a dedicated airborne platform for the transmission of Radio and Television Marti into Cuba.” The longer term proposal for a dedicated airborne platform would not be a military aircraft but an aircraft acquired and operated by the Broadcasting Board of Governors’ Office of Cuba Broadcasting (OCB). Assistant Secretary of State for Western Hemisphere Affairs Noriega indicated that some of the funding may come from existing resources already provided for Cuba broadcasting, while there may be additional resources provided.<sup>52</sup>

At present, there are six EC-130E/J Commando Solo aircraft flown by the Air Force Special Operations Wing at Harrisburg, Pennsylvania. The aircraft are specialized assets that have been used to conduct information operations, psychological operations, and civil affairs broadcasts worldwide including Grenada in 1983, Operation Desert Storm in 1990-1991, Kosovo in 1999, Operation Enduring Freedom in Afghanistan, and Operation Iraqi Freedom.<sup>53</sup> In May 2003, the aircraft was used in a test to broadcast Radio and TV Marti to Cuba in an effort to overcome Cuban jamming of the U.S.-government broadcasts. The State Department announced that Radio and TV Marti were broadcast via the airborne platform for several hours on August 21, 2004.

While the production cost of the military aircraft range from \$70 million for the EC-130E to \$90 million for the EC-130J,<sup>54</sup> the cost of acquiring and refitting an aircraft to be operated by the Office of Cuba Broadcasting would be much less and would probably be covered by the amount of funding called for by the President.

**FY2005 Funding.** The Administration requested \$27.6 million for Cuba broadcasting, with \$17.4 million for Radio Marti and \$10.3 million for TV Marti, and this was fully funded in the FY2005 omnibus appropriations measure (P.L. 108-447, H.Rept. 108-792). In the Administration’s budget request, the Office of Cuba Broadcasting (OCB) proposed to close down the existing aerostat transmission system for TV Marti in Cudjoe Key, Florida, while the broadcast would continue to be carried on the Hispasat satellite. The OCB is reportedly continuing to explore ways of mitigating the jamming of TV Marti.

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<sup>52</sup> U.S. Department of State, Report to the President by the Commission for Assistance to a Free Cuba, Roger F. Noriega, Assistant Secretary for Western Hemisphere Affairs, Press Conference, May 6, 2004.

<sup>53</sup> U.S. Air Force Fact Sheet, “EC-130E/J COMMANDO SOLO,” April 2003.

<sup>54</sup> Ibid.

## U.S. Funding to Support Democracy and Human Rights

Over the past several years, the U.S. Agency for International Development has provided assistance to increase the flow of information on democracy, human rights, and free enterprise to Cuba. USAID's Cuba program supports a variety of U.S.-based non-governmental organizations to promote rapid, peaceful transition to democracy, help develop civil society, and build solidarity with Cuba's human rights activists.<sup>55</sup> These efforts are funded through the annual foreign operations appropriations bill. In FY2001, \$4.989 million was provided for various Cuba projects; \$5 million was provided in FY2002; \$6 million was provided in FY2003; and almost \$7 million was provided in FY2004.

For FY2005, the Administration requested \$9 million to back public diplomacy to promote democratization, respect for human rights, and the development of a free market economy in Cuba. The House-passed version of the FY2005 foreign operations appropriations bill, H.R. 4818, did not specifically earmark such assistance for Cuba, but the House Appropriations Committee's report to the bill (H.Rept. 108-599) noted that the committee fully supports the Administration's budget request. In final action, Congress fully funded the \$9 million request for Cuba projects in the FY2005 omnibus appropriations measure (P.L. 108-447, H.Rept. 108-792).

In addition to funding through foreign operations appropriations, the United States provides democratization assistance for Cuba through the National Endowment for Democracy (NED), which is funded through the annual Commerce, Justice, and State (CJS) appropriations measure. Cuba funding through NED has steadily increased over the past several years. NED-funded democracy projects for Cuba amounted to \$765,000 in FY2001; \$841,000 in FY2002; \$1.143 million in FY2003; and \$1.149 million in FY2004.

## Migration Issues<sup>56</sup>

**1994 and 1995 Agreements.** In 1994 and 1995, Cuba and the United States reached two migration accords designed to stem the mass exodus of Cubans attempting to reach the United States by boat. On the minds of U.S. policymakers was the 1980 Mariel boatlift in which 125,000 Cubans fled to the United States with the approval of Cuban officials. In response to Castro's threat to unleash another Mariel, U.S. officials reiterated U.S. resolve not to allow another exodus. Amidst escalating numbers of fleeing Cubans, on August 19, 1994, President Clinton abruptly changed U.S. migration policy, under which Cubans attempting to flee their homeland were allowed into the United States, and announced that the U.S. Coast Guard and Navy would take Cubans rescued at sea to the U.S. naval base at

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<sup>55</sup> See USAID's Cuba program website: [[http://www.usaid.gov/locations/latin\\_america\\_caribbean/country/cuba/](http://www.usaid.gov/locations/latin_america_caribbean/country/cuba/)].

<sup>56</sup> For more, see CRS Report RS20468, *Cuban Migration Policy and Issues*, by Ruth Ellen Wasem.

Guantanamo Bay, Cuba. Despite the change in policy, Cubans continued fleeing in large numbers.

As a result, in early September 1994, Cuba and the United States began talks that culminated in a September 9, 1994 bilateral agreement to stem the flow of Cubans fleeing to the United States by boat. In the agreement, the United States and Cuba agreed to facilitate safe, legal, and orderly Cuban migration to the United States, consistent with a 1984 migration agreement. The United States agreed to ensure that total legal Cuban migration to the United States would be a minimum of 20,000 each year, not including immediate relatives of U.S. citizens. In a change of policy, the United States agreed to discontinue the practice of granting parole to all Cuban migrants who reach the United States, while Cuba agreed to take measures to prevent unsafe departures from Cuba.

In May 1995, the United States reached another accord with Cuba under which the United States would parole the more than 30,000 Cubans housed at Guantanamo into the United States, but would intercept future Cuban migrants attempting to enter the United States by sea and would return them to Cuba. The two countries would cooperate jointly in the effort. Both countries also pledged to ensure that no action would be taken against those migrants returned to Cuba as a consequence of their attempt to immigrate illegally. On January 31, 1996, the Department of Defense announced that the last of some 32,000 Cubans intercepted at sea and housed at Guantanamo had left the U.S. Naval Base, most having been paroled into the United States.

**Elían Gonzalez Case.**<sup>57</sup> From late November 1999 through June 2000, national attention became focused on Cuban migration policy as a result of the Elían Gonzalez case, the five-year old boy found clinging to an inner tube off the coast of Fort Lauderdale. The boy's mother drowned in the incident, while his father, who resided in Cuba, called for his return. Although the boy's relatives in Miami wanted him to stay in the United States, the Immigration and Naturalization Service ruled that the boy's father had the sole legal authority to speak on his son's behalf. After numerous legal appeals by the Miami relatives were exhausted, the boy returned to Cuba with his father in June 2000. In Cuba, Fidel Castro orchestrated numerous mass demonstrations and a media blitz on the issue until the boy's return. The case generated an outpouring of emotion among the Cuban population as well as in south Florida.

**Wet Foot/Dry Foot Policy.** Since the 1995 migration accord, the U.S. Coast Guard has interdicted thousands of Cubans at sea and returned them to their country, while those deemed at risk for persecution have been transferred to Guantanamo and then found asylum in a third country. Those Cubans who reach shore are allowed to apply for permanent resident status in one year, pursuant to the Cuban Adjustment Act of 1966 (P.L. 89-732). This so-called "wet foot/dry foot" policy has been criticized by some as encouraging Cubans to risk their lives in order to make it to the United States and as encouraging alien smuggling. Others maintain that U.S. policy

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<sup>57</sup> For more information, see CRS Report RS20450, *The Case of Elían Gonzalez: Legal Basics*, by Larry M. Eig.

should welcome those migrants fleeing communist Cuba whether or not they are able to make it to land.

U.S. prosecution against migrant smugglers in Florida has increased in recent years with numerous convictions. There have been several violent incidents in which Cuban migrants have brandished weapons or in which Coast Guard officials have used force to prevent Cubans from reaching shore. In July 2003, a U.S. federal court in Florida convicted a Cuban national for hijacking a plane to Key West on April 1, 2003. Another six Cubans were convicted in Key West in December 2003 for hijacking a Cubana Airlines plane to Florida earlier in the year.

The Cuban government has taken forceful action against individuals engaging in alien smuggling. Prison sentences of up to three years may be imposed against those engaging in alien smuggling, and for incidents involving death or violence, a life sentence may be imposed. On April 11, 2003, the Cuban government executed three men who had hijacked a ferry in Havana on April 2 in an attempt to reach the United States. The ferry hijacking had been preceded by the hijacking of two small planes to the United States. The summary execution prompted worldwide condemnation of the Cuban government. The Cuban government maintained that it took the action to prevent additional hijackings.

The U.S. Interest Section in Havana has officers that visit the homes of returned migrants to assess the Cuban government's treatment of those repatriated. The Department of State (pursuant to P.L. 105-277, Section 2245) makes a semi-annual report to Congress on the methods employed by the Cuban government to enforce the the 1994 migration agreement and on the Cuban government's treatment of those returned. In the most recent report to Congress, submitted in May 2004, the State Department noted that it has been unable to monitor returnees outside Havana since March 2003. The State Department noted, however, that prior to that time, "a majority of the returnees it monitored did not suffer retribution from the Cuban authorities as a result of their attempt to depart illegally" but noted that "there continued to be clear and credible instances of harassment and punishment of returnees."<sup>58</sup>

On July 21, 2003, the U.S. Coast Guard repatriated 15 Cubans who had been interdicted on a Cuban government vessel that had been stolen on July 15 (12 of the Cubans were involved in stealing the boat and overpowered the three others who were guarding the government vessel.) The United States returned the Cubans after assurances from the Cuban government that no one would face execution and no one would serve more than 10 years in prison. The Cuban government lauded the return of the migrants for being in line with the 1995 migration agreement. The repatriation of the migrants prompted widespread criticism of the Administration in Florida and among some Members of Congress. Some critics called for an investigation into the U.S.-Cuban negotiations that led to the return of the migrants and some have called for the Administration to change the policy of repatriating those Cubans interdicted

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<sup>58</sup> U.S. Department of State. "Cuban Emigration Policies, Report Submitted by the Department of State Pursuant to Section 2245 of the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999 (P.L. 105-277)" May 2004.

at sea. Supporters of the policy maintained that implementation of the migration accords is important for preventing another mass exodus of Cubans fleeing to the United States.

On October 10, 2003, President Bush announced that the United States would increase the number of new Cuban immigrants each year, improve the method of identifying refugees, redouble efforts to process Cubans seeking to leave Cuba, and initiate a public information campaign in Florida and Cuba to better inform Cubans of the routes to safe and legal migration to the United States. The President's announcement was in part a response to the criticism of the Administration's migration policy in the aftermath of the July 2003 repatriation of the individuals involved in stealing a Cuban government vessel.

**Migration Talks.** Semi-annual U.S.-Cuban talks alternating between Cuba and the United States had been held regularly on the implementation of the 1994 and 1995 migration accords, but the State Department cancelled the 20<sup>th</sup> round of talks scheduled for January 2004, and no migration talks have been held since. According to the State Department, Cuba has refused to discuss five issues identified by the United States: (1) Cuba's issuance of exit permits for all qualified migrants; (2) Cuba's cooperation in holding a new registration for an immigrant lottery; (3) the need for a deeper Cuban port utilized by the U.S. Coast Guard for the repatriation of Cubans interdicted at sea; (4) Cuba's responsibility to permit U.S. diplomats to travel to monitor returned migrants; and (5) Cuba's obligation to accept the return of Cuban nationals determined to be excludable from the United States.<sup>59</sup>

In response to the cancellation of the talks, Cuban officials maintained that the U.S. decision was irresponsible and that it was prepared to discuss all of the issues raised by the United States.<sup>60</sup> The last time talks were suspended was in 2000 by the Cuban government when Elian Gonzalez was in the United States.

## Legislation Approved in the 108<sup>th</sup> Congress

### Appropriations Measures

**P.L. 108-447 (H.R. 4818), Consolidated Appropriations Act for FY2005.** Originally introduced as FY2005 Foreign Operations Appropriations, which the House approved on July 13, 2004, and the Senate approved, amended, on September 23, 2004. Conference report, H.Rept. 108-792, filed November 20, 2004, which incorporated nine regular appropriations bills. The House agreed (344-51) to the conference report on November 20, 2004, as did the Senate (65-30). President signed into law December 8, 2004.

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<sup>59</sup> U.S. Department of State. State Department Regular Briefing, Richard Boucher. January 7, 2004.

<sup>60</sup> "Migration Talks Cancelled," *Miami Herald*, January 8, 2004.

Division A, covering Agriculture appropriations, dropped the Cuba provision that had been included in the Senate committee version of S. 2803 (Section 776) that would have eased restrictions on travel to Cuba if it was related to the commercial sale of agricultural and medical products.

Division B, covering Commerce, Justice and State appropriations, dropped the Cuba provision in the House-passed version of H.R. 4754 (Section 801) that would have prohibited funds from being used to implement recent restrictions on gift parcels and on baggage for travelers. The omnibus measure also earmarked \$27.629 million for broadcasting to Cuba, the full amount requested by the Administration.

Division D, covering Foreign Operations appropriations, dropped contrasting House- and Senate-approved provisions from the original versions of H.R. 4818 related to assistance for cooperation with Cuba on counter-narcotics matters. The Senate version would have provided \$5 million in International Narcotics Control and Law Enforcement assistance for such efforts, while the House version would have prohibited such assistance. The omnibus measure also earmarked \$9 million in Economic Support Funds, as requested by the Administration, for Cuba projects to promote democratization, respect for human rights, and the development of a free market economy.

Division H, covering Transportation/Treasury appropriations, dropped all House and Senate provisions that would have eased Cuba sanctions. These consisted of three House provisions in H.R. 5025 that would have eased Cuba sanctions on family and educational travel and on private commercial sales of agricultural and medical products; and one Senate provision in the committee version S. 2806 that would have prohibited funds from administering or enforcing restrictions on Cuba travel.

**P.L. 108-199 (H.R. 2673), Consolidated Appropriations Act for FY2004.** Originally introduced as the FY2004 agriculture appropriations measure, which the House passed July 14, 2003, and the Senate passed November 6, 2003. On November 25, 2003, a conference report was filed, H.Rept. 108-401, which incorporated seven regular appropriations acts for the year. Conference report agreed to (242-176) in House November 25, 2003; agreed to (65-28) in Senate January 22, 2004. Signed into law January 23, 2004.

Division A, covering Agriculture appropriations, dropped the Cuba provision that had been included in the Senate-approved version of H.R. 2673 (Section 760) that would have allowed travel to Cuba under a general license (without applying to the Treasury Department) for travel related to commercial sales of agricultural and medical goods.

Division B, covering Commerce, Justice, and State appropriations, funds Radio and TV broadcasting to Cuba under the International Broadcasting Operations Account, but without a specific earmark. The conferees stated that they expected the Broadcasting Board of Governors to provide \$1.2 million to pursue alternative means of transmission, including Internet transmission, of Cuba broadcasting. The Administration requested \$26.901 million for Cuba broadcasting, with \$16.355 million for Radio Marti and \$10.546 million for TV Marti.

Division D, covering Foreign Operations appropriations, did not include assistance for counter-narcotics cooperation with Cuba that had been in the Senate-approved version of H.R. 2800 (Section 680), nor did it include the provision in the House version of bill (Section 571) that would have prohibited such assistance. Division D also funded democracy programs for Cuba. While the conferees did not earmark assistance for Cuba democracy programs in the bill, the conference report recommended full funding of the Administration's \$7 million in Economic Support Funds for democracy programs supported by USAID. The House-passed version of H.R. 2800 had no earmark (although the House report, H.Rept. 108-122, recommended full funding of the Administration's \$7 million request), while the Senate-passed version of H.R. 2800 (Section 699G) would have provided not more than \$5 billion in Transition Initiatives funds for democracy-building efforts for Cuba.

Division F, covering Transportation/Treasury appropriations, dropped all provisions easing Cuba sanctions that had been included in the House- and Senate-approved versions of H.R. 2989. Both the House and Senate versions of H.R. 2989 had a nearly identical provision (Section 745 in the House version and Section 643 in the Senate version) that would have prevented funds from being used to administer or enforce restrictions on travel or travel-related transactions. In addition, the House version of H.R. 2989 had provisions that would have prevented funds from being used to administer or enforce restrictions on remittances (Section 746) and from being used to eliminate the travel category of people-to-people educational exchanges (Section 749).

**P.L. 108-7 (H.J.Res. 2), Consolidated Appropriations Resolution for FY2003.** President signed into law February 20, 2003. While the measure did not earmark funding for human rights and democracy projects for Cuba, it funded FY2003 Foreign Operations appropriations; the Administration's FY2003 foreign aid request had included \$6 million for such projects (\$5.750 was ultimately allocated by the Administration). The omnibus bill also provided \$24.996 million for Radio and TV Marti broadcasting to Cuba.

## Human Rights Resolutions

**H.Res. 179 (Diaz-Balart, Lincoln).** Expresses the sense of the House regarding the systematic human rights violations in Cuba committed by the Castro regime, calls for the immediate release of all political prisoners, and supports respect for basic human rights and free elections in Cuba. Introduced April 7, 2003. House passed (414-0, 11 present) April 8, 2003.

**S.Res. 62 (Ensign).** Calling upon the OAS Inter-American Commission on Human Rights, the U.N. High Commissioner for Human Rights, the European Union, and human rights activists throughout the world to take certain actions in regard to the human rights situation in Cuba. Introduced February 24, 2003; referred to Committee on Foreign Relations. Senate agreed to by unanimous consent on June 27, 2003.

**S.Res. 97 (Nelson, Bill).** Expresses the sense of the Senate regarding the arrests of Cuban democracy activists by the Cuban government. Introduced March 25,

2003; Senate Committee on Foreign Relations discharged by unanimous consent. Senate amended and agreed to the resolution April 7, 2003, by unanimous consent.

**S.Res. 328 (Nelson, Bill).** Expresses the sense of the Senate regarding the continued human rights violations committed by Fidel Castro and the Cuban government, calls on Cuba to immediately release individuals imprisoned for political purposes, and calls upon the 60<sup>th</sup> session of the U.N. Commission on Human Rights to condemn Cuba for its human rights abuses and demand that inspectors from the International Committee of the Red Cross be allowed to visit and inspect Cuban prisons. Introduced April 1, 2004; Senate passed, amended, April 8, 2004, by unanimous consent.

## For Additional Reading

CRS Report RL32308, *Appropriations for FY2005: Transportation, Treasury, Postal Service, Executive Office of the President, General Government, and Related Agencies*, coordinated by David Randall Peterman and John Frittelli.

CRS Report RS20450, *The Case of Elian Gonzalez: Legal Basics*, by Larry M. Eig.

CRS Report RL32251, *Cuba and the State Sponsors of Terrorism List*, by Mark P. Sullivan.

CRS Report RL30837, *Cuba: An Economic Primer*, by Ian F. Fergusson.

CRS Report RL31740, *Cuba: Issues for the 108<sup>th</sup> Congress*, by Mark P. Sullivan.

CRS Report RL30806, *Cuba: Issues for the 107<sup>th</sup> Congress*, by Mark P. Sullivan and Maureen Taft-Morales.

CRS Report RL30628, *Cuba: Issues and Legislation in the 106<sup>th</sup> Congress*, by Mark P. Sullivan and Maureen Taft-Morales.

CRS Report RL31139, *Cuba: U.S. Restrictions on Travel and Remittances*, by Mark P. Sullivan.

CRS Report RL30386, *Cuba-U.S. Relations: Chronology of Key Events 1959-1999*, by Mark P. Sullivan.

CRS Report RS20468, *Cuban Migration Policy and Issues*, by Ruth Ellen Wasem.

CRS Issue Brief IB10061, *Exempting Food and Agriculture Products from U.S. Economic Sanctions: Status and Implementation*, by Remy Jurenas.

CRS Report 94-636, *Radio and Television Broadcasting to Cuba: Background and Issues Through 1994*, by Susan B. Epstein and Mark P. Sullivan.

CRS Report RS21764, *Restricting Trademark Rights of Cubans: WTO Decision and Congressional Response*, by Margaret Mikyung Lee.

CRS Report RL31258, *Suits Against Terrorist States by Victims of Terrorism*, by David M. Ackerman.

CRS Report RS21003, *Travel Restrictions: U.S. Government Limits on American Citizens' Travel Abroad*, by Susan B. Epstein and Dianne E. Rennack.