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Elizabeth Hanford

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Feature Article
**The Future of United States "Wet Foot-Dry Foot" Policy
For Cuban Immigration**

Elizabeth Hanford

On December 17, 2014, President Obama announced that his administration will "begin the process of reestablishing diplomatic relations with Cuba."¹ After half a century of severed diplomatic ties between the two countries, this announcement represents a historic moment in U.S. and Cuba relations.² Many politicians have already vocalized their thoughts on this issue and whether the "Wet Foot-Dry Foot" policy should continue.³

THE CASTRO REGIME

In 1956, Fidel Castro launched a guerrilla war, or revolution, depending upon whom you ask, against the sitting Cuban dictator, Fulgencio Batista.⁴ The revolt ended on January 1, 1959, marking the birth of the Castro regime.⁵ Soon after gaining control of Cuba, Castro began to nationalize the country, including United States' owned businesses on Cuban soil.⁶ As a result, the Eisenhower administration placed the United States' first ever embargo against

¹ Krishnadev Calamur, *Obama Unveils 'New Approach' On Cuba As Former Foes Chart New Course*, NPR, Dec. 17, 2015. Available at: <http://www.npr.org/blogs/thetwo-way/2014/12/17/371398638/cuba-frees-american-contractor-alan-gross>; Eyder Peralta, *New Cuba Policy Is Met With Cheers And Jeers On Both Sides Of The Aisle*, NPR, Dec. 17, 2015. Available at: <http://www.npr.org/blogs/thetwo-way/2014/12/17/371398638/cuba-frees-american-contractor-alan-gross>.

² Calamur, *supra* note 1.

³ Peralta, *supra* note 1; Lizette Alvarez, *Law Favoring Cuban Arrivals Is Challenged*, N.Y. TIMES, Feb. 1, 2015. Available at: http://www.nytimes.com/2015/02/02/us/law-favoring-cuba-arrivals-is-challenged.html?_r=2.

⁴ Joyce A. Hughes and Alexander L. Alum, *Rethinking the Cuban Adjustment Act and the U.S. National Interest*, 23 St. Thomas L. Rev. 187, 189, 192 (2011) (quoting FELIX MASUD-PILOTO, from WELCOMED EXILES TO ILLEGAL IMMIGRANTS: CUBAN MIGRATION TO THE U.S., 1959-1995 19 (1995)).

⁵ *Id.* at 189.

⁶ *Id.* at 192.

Cuba on October 19, 1960.⁷ The embargo restricted certain exports from the United States to Cuba.⁸

The United States severed diplomatic ties with Cuba on January 3, 1961.⁹ Following the failure of the April 1961 Bay of Pigs invasion, covertly supported by the United States CIA, Castro “proclaimed the socialist nature of the Cuban Revolution.”¹⁰ Upon hearing this news, the Soviet Union sent “military artillery, including nuclear missiles” to the Cuban government.¹¹ From 1959 to 1962, approximately “248,070 Cubans fled the country. The majority of these refugees were well-educated citizens, many of them doctors, lawyers, and professors.”¹²

On February 7, 1962, President Kennedy issued an executive order placing an additional trade embargo against Cuba.¹³ Further strain on U.S.-Cuba relations occurred when the United States discovered the nuclear missile exchanges between Cuba and the Soviet Union in October 1962.¹⁴ The Kennedy Administration imposed “a naval blockade around the island, resulting in a confrontation with the Soviet Union known as the Cuban Missile Crisis.”¹⁵ Sources conflict on who banned scheduled travel between the two countries at this time, but in the aftermath, “the risky practice of asylum seekers setting sail from Cuba to Florida began.”¹⁶

⁷ Jarrett Barrios, *People First: The Cuban Travel Ban, Wet Foot-Dry Foot and Why the Executive Branch Can and Should Begin Normalizing Cuba Policy*, 11 CONN. PUB. INT. L.J. 1, 12 (2011); *History of Cuba*, NATIONS ONLINE. Available at: <http://www.nationsonline.org/oneworld/History/Cuba-history.htm> (last visited Mar. 24, 2015).

⁸ Barrios, *supra* note 7, at 12 (citing United States Institutes Controls on Exports to Cuba, DEP’T ST. BULL., NOV. 7, 1960, at 715).

⁹ MARK P. SULLIVAN, CONG. RESEARCH SERV., R43882, LATIN AMERICA AND THE CARIBBEAN: KEY ISSUES FOR THE 114TH CONGRESS, 9 (2015); DIANNE E. RENNACK AND MARK P. SULLIVAN, CONG. RESEARCH SERV., R43888, CUBA SANCTIONS: LEGISLATIVE RESTRICTIONS LIMITING THE NORMALIZATION OF RELATIONS, 2 (2015); *History*, *supra* note 7.

¹⁰ Hughes, *supra* note 4, at 192; Heather Reynolds, *Irreconcilable Regulations: Why the Sun Has Set on the Cuban Adjustment Act in Florida*, 63 Fla. L. Rev. 1013, 1016 (2011).

¹¹ Reynolds, *supra* note 10, at 1016.

¹² *Id.* at 1015-16

¹³ RENNACK, *supra* note 9, at 1.

¹⁴ Hughes, *supra* note 4, at 193.

¹⁵ *Id.*

¹⁶ *Id.* at 194; Reynolds, *supra* note 10, at 1016; RUTH ELLEN WASEM, CONG. RESEARCH SERV., R40566, CUBAN MIGRATION TO THE UNITED STATES: POLICY AND TRENDS, 1 (2009); *The Cuban Adjustment Act of 1966: ¿Mirando por los Ojos de Don Quijote O Sancho Panza?* 114 HARV. L. REV. 902, 904 (2001); CHARLOTTE J. MOORE, CONG. RESEARCH SERV., ED 206779. REVIEW OF U.S. REFUGEE RESETTLEMENT PROGRAMS AND POLICIES 198 (1980).

Almost three years later, Castro “announced that people were free to leave for the United States from the port of Camarioca.”¹⁷ In order to keep people from taking to the seas, the Johnson Administration agreed to fly Cubans to the United States on “Freedom Flights” to Miami.¹⁸ The Cubans who entered the United States “were admitted under the Attorney General’s general powers of parole, most without immigrant visas, security checks or confirmed means of financial support required of other immigrants.”¹⁹ Immigrant visas were not available in Cuba due to the degeneration of diplomatic relations between the two countries.²⁰

The grant of parole is not “admission as a lawful permanent resident.”²¹ Parole allows for “temporary, unofficial entry into the United States pending the resolution of [an] application.”²² Paroled immigrants are unable to legally work, enroll in school, or obtain government-provided healthcare.²³ To combat the increasing numbers of paroled immigrants in the United States without access to healthcare and income, Congress passed the Cuban Adjustment Act in 1966.²⁴

CUBAN ADJUSTMENT ACT

The Cuban Adjustment Act allows for a Cuban refugee to become a lawful permanent resident after residing in the United States for one year.²⁵ Refugees are defined as “victims of persecution from foreign lands.”²⁶ Originally, the Act required residency for two years, but the requirement was changed in 1980 amidst a rapid increase in Cuban arrivals.²⁷ Its purposes were to “(1) ease the administrative burden of Cuban exiles who wanted to become lawful perma-

¹⁷ Marc R. Rosenblum and Faye Hipsman, *Normalization of Relations with Cuba May Portend Changes to U.S. Immigration Policy*, MIGRATION POL’Y INST., Jan. 13, 2015. Available at: <http://www.migrationpolicy.org/article/normalization-relations-cuba-may-portend-changes-us-immigration-policy>.

¹⁸ *Id.*

¹⁹ Barrios, *supra* note 7, at 5.

²⁰ Gabriel Zeller, *Do Cubans Deserve Special Treatment? A Comparative Study relating to the Cuban Adjustment Act*, 4 *Elon L. Rev.* 235, 239 (2012).

²¹ Hughes, *supra* note 4, at 196.

²² Reynolds, *supra* note 10, at 1019 (internal quotation marks omitted) (*quoting Benitez v. Wallis*, 337 F.3d 1289, 1296 (11th Cir. 2003)).

²³ *Id.* at 1019-20.

²⁴ *Id.* at 1019.

²⁵ Barrios, *supra* note 7, at 6.

²⁶ *Don Quijote*, *supra* note 16, at 905.

²⁷ *Id.*

ment residents; (2) integrate Cuban exiles into the American workforce;” “(3) provide refuge to victims of communist persecution;” and (4) “further U.S. efforts in the ideological war against communism.”²⁸

The Act gives the United States Attorney General a discretionary power to adjust “the status of any alien who is a native or citizen of Cuba and who has been inspected and admitted or paroled into the United States.”²⁹ Jarrett Barrios, CEO of the American Red Cross of Eastern Massachusetts, suggests that President Johnson wanted the Attorney General to have this discretionary power in order to keep “control over Cuba policy inside the executive branch.”³⁰

MASS MIGRATION

From December 1965 to March 1980, approximately 342,127 Cubans arrived in the United States.³¹ The number of arrivals fluctuated each year, “with the size of that flow being controlled more by Castro than by the decisions of either the U.S. Government or of the individual refugees.”³² The majority of refugees at this phase of migration were “largely working class and ‘petit bourgeois’: employees, independent craftsmen, small merchants, skilled and semi-skilled workers.”³³

In January 1979, Castro allowed Cuban exiles to return and reconnect with their families and friends still on the island.³⁴ Approximately 100,000 Cubans took advantage of the opportunity and returned.³⁵ Silvia Pedraza, Professor of Sociology and American Culture at the University of Michigan, suggests that these “reunions were partly responsible for the next mass exodus” in 1980.³⁶ The Cubans who returned brought hope for a better life in the United States and “made the scarcity of consumer goods and food [in Cuba] less bear-

²⁸ Hughes, *supra* note 4, at 196.

²⁹ Cuban Adjustment Act, Pub. L. No. 89-732, 80 Stat. 1161 (1966).

³⁰ Barrios, *supra* note 7, at 28.

³¹ Larry Nackerud, Alyson Springer, Christopher Larrison, and Alicia Issac, *The End of the Cuban Contradiction in U.S. Refugee Policy*, 33 INT’L MIGRATION REV. 176, 188 (1999); MOORE, *supra* note 16, at 199.

³² MOORE, *supra* note 16, at 198.

³³ Silvia Pedraza-Bailey, *Cuba’s Exiles: Portrait of a Refugee Migration*, 19 INT’L MIGRATION REV. 1, 16 (Spring 1985).

³⁴ *Id.* at 21.

³⁵ *Id.* at 22.

³⁶ *Id.*

able.”³⁷ In what became known as the “Mariel boatlift,” approximately 125,000 Cubans fled to the United States in boats across the Florida Straits.³⁸

THE CLINTON ADMINISTRATION

As more and more people left Cuba, economic troubles plighted the country and tensions grew.³⁹ After a number of violent incidents and riots, another surge in Cuban refugees occurred in 1994.⁴⁰ In an effort to curb the mass migration, “President Clinton announced – in a reversal of a policy in place since the early days of Castro – that the Coast Guard would no longer bring Cubans rescued at sea into the United States.”⁴¹ Instead, the Coast Guard would bring the refugees “to Guantanamo Bay Naval Base with no opportunity for lawful admission into the United States.”⁴²

The surge in Cuban refugees prompted the Clinton Administration to meet with Castro and discuss the migration issues.⁴³ In the 1994 Migration Agreement, “Cuba agreed to discourage boat departures, while the United States agreed to grant admission to at least 20,000 Cuban nationals annually and to place intercepted Cubans in safe havens to be considered for asylum.”⁴⁴ This minimum quota of 20,000 visas is still in effect today.⁴⁵

At the 1995 Migration Agreement, “the U.S. agreed to abandon its brief experiment in sending Cuban nationals to third country ‘safe havens’ and instead to repatriate those Cuban nationals intercepted at sea who did not assert credible asylum claims.”⁴⁶ These two migration agreements, in conjunction with the Cuban Adjustment Act, have formed the current “Wet Foot-Dry Foot” policy of immigration for Cuban refugees.⁴⁷

³⁷ *Id.* at 26.

³⁸ *Id.* at 22; MARK P. SULLIVAN, CONG. RESEARCH SERV., R43024, CUBA: U.S. POLICY AND ISSUES FOR CONGRESS 58 (2014).

³⁹ Barrios, *supra* note 7, at 6-7.

⁴⁰ *Id.*

⁴¹ *Id.* at 7.

⁴² *Id.*

⁴³ Rosenblum, *supra* note 17.

⁴⁴ *Id.*

⁴⁵ *Id.*; Alvarez, *supra* note 3.

⁴⁶ Barrios, *supra* note 7, at 8.

⁴⁷ *Id.*; Rosenblum, *supra* note 17.

CURRENT IMMIGRATION POLICY

In 2012, approximately 1.9 million people of Cuban origin lived in the United States, “with nearly 70 percent of the population in Florida.”⁴⁸ Currently, there are four ways that Cuban nationals can legally migrate to the United States: “(1) the issuance of an immigrant visa; (2) admission as a political refugee; (3) winning the diversity lottery; or (4) selection through the Special Cuban Migration Program, generally known as the Cuban lottery.”⁴⁹

The Obama Administration has announced that it does not wish to change the current immigration policy toward Cuba.⁵⁰ However, normalization of other policies toward Cuba calls into question whether the Obama Administration’s stance will change in the near future. Congresswoman Ileana Ros-Lehtinen reasons that “President Obama cannot say ‘we have diplomatic relations with Cuba’ and yet, at the same time, say ‘but we’re not going to change any of our immigration policies toward Cuba.’”⁵¹

CALL FOR REFORM

Congressman Mario Diaz-Balart believes the Cuban Adjustment Act “is ripe for reform.”⁵² Critics argue that criminals abuse the policy by “regularly travel[ing] back and forth between Cuba and the United States as economic, not political, refugees.”⁵³ These criminals “take advantage of [the policy] to ferry money between Cuba and the United States, and then flee to Cuba rather than risk arrest.”⁵⁴ Critics also argue that the “law tempts Cubans to risk their lives at sea, enriches smugglers and siphons away Cuban professionals.”⁵⁵

The Cuban government is critical of the Act, calling it “murderous” and a “terrorist” law.⁵⁶ Josefina Vidal, Cuba’s head of North American Affairs, says

⁴⁸ *Cuban-Americans: Politics, culture and shifting demographics*, JOURNALIST’S RESOURCE. Available at: <http://journalistsresource.org/studies/government/immigration/cuban-americans-politics-culture-demographics> (last updated Dec. 18, 2014).

⁴⁹ Reynolds, *supra* note 10, at 1024.

⁵⁰ Alvarez, *supra* note 3.

⁵¹ Megan O’Matz, *Cuba Adjustment Act reform planned*, SUN SENTINEL, Feb. 6, 2015. Available at <http://www.sun-sentinel.com/news/nationworld/fl-congress-cuban-adjustment-act-2015-0206-story.html> (internal quotation marks omitted).

⁵² *Id.*

⁵³ Alvarez, *supra* note 3.

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ Reynolds, *supra* note 10, at 1022 (*quoting* Fidel Castro, Address at Mass Rally in the “José Martí” Anti-Imperialist Square, City of Havana 12 (Nov. 27, 2001)).

"Cuba wants a normal relationship with the U.S., in the broadest sense but also in the area of migration."⁵⁷

Marc R. Roseblum, an immigration expert for the Migration Policy Institute, views the current Cuban immigration policy as creating "more than a double standard" when compared to other refugees in dire circumstances.⁵⁸ Congresswoman Zoe Lofgren argues that the U.S. should "have a more generous policy for other people fleeing oppression."⁵⁹ Principles of fairness, important to the American legal tradition, underlie these arguments. Jarrett Barrios notes that "a daunting immigration process exists through which [most] aspirants obtain legal entry and residence" to the United States.⁶⁰ However, Cubans are "fast-tracked for a green card and into the pipeline for citizenship."⁶¹

Also important to note, current immigration policies effectively make Cuban nationals "exempt from deportation and immigration enforcement policies affecting all other noncitizens."⁶² Additionally, "many are eligible for federal assistance and means-tested benefits from which most noncitizens are barred."⁶³ Marc Roseblum states that the United States provides a "totally unique status" to Cuban refugees.⁶⁴ Scholars observe, "fairness is not a defining feature of U.S. immigration policy toward Latin Americans."⁶⁵

Cuban refugees in the U.S. appear divided on the issue.⁶⁶ The older refugees, from the first wave of migration, have more political influence and believe the immigration policy "should only protect Cubans fleeing from political oppression."⁶⁷ However, newer immigrants "are more likely to support [the policy's] blanket application to all Cuban immigrants."⁶⁸

⁵⁷ Anne-Marie Garcia, Andrea Rodriguez, and Jennifer Kay, *US, Cuba Spar Over Migration Policy at Historic Havana Talks*, N.Y. TIMES, Jan. 21, 2015. Available at: <http://www.nytimes.com/aponline/2015/01/21/world/americas/ap-lt-united-states-cuba.html>.

⁵⁸ Interview with Marc Rosenblum, Deputy Direct of Migration Policy Institute's U.S. Immigration Policy Program (March 24, 2015).

⁵⁹ Alvarez, *supra* note 3.

⁶⁰ Barrios, *supra* note 7, at 4.

⁶¹ *Id.*

⁶² Roseblum, *supra* note 17.

⁶³ *Id.*

⁶⁴ Rosenblum Interview, *supra* note 58.

⁶⁵ Marta Tienda & Susana M. Sánchez, *Latin American Immigration to the United States*, 142 DÆDALUS, 48, 60 (Summer 2013).

⁶⁶ Alvarez, *supra* note 3.

⁶⁷ *Id.*

⁶⁸ *Id.*

Some Cubans still living in Cuba “are worried the elimination of the rules would take away their chance to have a better life in the U.S.”⁶⁹ As Gabriel Zeller argues, “there is a legitimate reason for treating Cubans differently from Latinos of other national origins,” because “Cuba is unique in the degree to which it politically represses its people.”⁷⁰ Additionally, he argues, “Cubans do not have the freedom to change their government,” whereas other Latin American countries have the ability to try.⁷¹ However, Marc Rosenblum responds, “it is not clear that Cuba is so much worse than every other country in the world.”⁷²

Considering some of the most vocal politicians on Cuban immigration may run for President in the next election, including Ted Cruz and Marco Rubio, the issue of whether the current policy should continue will likely be a hot button topic during election season. Although the “Wet Foot-Dry Foot” policy fast tracks Cuban immigrants to gain access to healthcare and income in a short amount of time, the fast track may not be necessary as Cuba and the United States move toward a restoration of diplomatic relations. Additionally, the criminal abuse and inherent unfairness of the “Wet Foot-Dry Foot” policy suggest a new policy is in order. Therefore, voters, politicians, and experts should work together to further research this issue to determine the best immigration policy toward Cuba.

⁶⁹ Garcia, *supra* note 57.

⁷⁰ Zeller, *supra* note 20, at 236-37.

⁷¹ Id. at 247.

⁷² Rosenblum Interview, *supra* note 58.