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Cuba: Issues for the 109th Congress

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Summary

Cuba under Fidel Castro remains a hard-line communist state with a poor record on human rights — a record that has worsened since 2003. 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, on sending private humanitarian assistance to Cuba, and on the payment process for U.S. agricultural exports 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.

Most attention in the 109th Congress has focused on Cuba's human rights situation and on Cuba sanctions. Legislative initiatives have included four human rights resolutions: House-passed H.Con.Res. 81, H.Res. 193, and H.Res. 388; Senate-passed S.Res. 140; and H.Con.Res. 165, which also expresses support for the embargo. In addition, H.R. 3057 would fund democracy projects for Cuba; House-passed H.R. 2601 would authorize $5 million for U.S. government scholarship and exchange programs; a pending amendment (S.Amdt. 319) to S. 600 would authorize $15 million in democracy and human rights projects.

With regard to Cuba sanctions, the House- and Senate-passed versions of H.R. 3058, the FY2006 Transportation appropriations bill, have identical provisions that would prohibit funds from being used to implement tightened restrictions on "payment of cash in advance" for U.S. agricultural exports to Cuba. Other initiatives include H.Con.Res. 206 (calls on the President to temporarily suspend some sanctions in the aftermath of Hurricane Dennis); H.R. 208 and H.R. 579 (overall Cuba sanctions); S. 894 and H.R. 1814, (travel) H.R. 2617 (family visits); H.R. 3064 (educational travel); H.R. 1339 and S. 634 (cash in advance for U.S. agricultural sales); and H.R. 719 and S. 328 (facilitation of agricultural sales). In addition, H.R. 719 and S. 328, as well as H.R. 3372 and S. 1604, would repeal a provision of law preventing payments from Cuban or foreign nationals for trademark registration related to confiscated assets in Cuba. In contrast, H.R. 1689 and S. 691 would amend the law regarding Cuban trademarks so that it applies to all parties regardless of nationality. Other legislative initiative have provisions related to Cuba broadcasting (H.R. 2862, H.R. 3057, S. 600, and H.R. 2601); anti-drug cooperation (H.R. 3057); and U.S. fugitives in Cuba (H.R. 2601, H.R. 332).

For additional information, see CRS Report RL31139, *Cuba: U.S. Restrictions on Travel and Remittances*, by Mark P. Sullivan; CRS Issue Brief IB10061, *Exempting Food and Agriculture Products from U.S. Economic Sanctions: Status and Implementation*, by Remy Jurenas; and CRS Report RS22228, *Cuba after Fidel Castro: Issues for U.S. Policy*, by Mark P. Sullivan.

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Major Developments

On October 27, 2005, the State Department announced that Cuba had accepted a U.S. offer to send government officials to assess damage in the aftermath of Hurricane Wilma that flooded Havana.

On October 26, 2005, a Cuban human rights group known as the Ladies in White (*Damas de Blanco*) received the Sakharov Prize for Freedom of Thought from the European Parliament.

On October 20, 2005, the Senate approved its version of H.R. 3058, the FY2006 Transportation appropriations bill, with a provision (Section 719) that would prohibit funds from being used to implement tightened restrictions on "payment of cash in advance" for U.S. agricultural exports to Cuba. The House version, approved June 30, has an identical provision. The Administration's Statement of Policy on the bill maintains that the President would veto the bill if it contained this provision.

On September 29, 2005, the House approved H.Res. 388 regarding the Cuban government's extreme repression of members of Cuba's pro-democracy movement in July 2005.

On September 2, 2005, the Cuban government offered to send 1,100 doctors and medical equipment to the United States to assist with disaster relief in the aftermath of Hurricane Katrina. The Bush Administration declined the assistance.

On August 10, 2005, a U.S. federal appeals court ordered that five Cubans convicted in Miami in June 2001 for spying (the so-called Wasp network) be provided a new trial because of "pervasive community prejudice."

In early August 2005, three dissidents arrested in July — René Gomez Manzano, Oscar Mario González, and Julio César López — were informed that they would be tried on charges of working to undermine the government. According to Amnesty International, more than 50 Cubans were detained for organizing or participating in demonstrations on July 13 and 22, 2005.

On July 29, 2005, the Treasury Department's Office of Foreign Assets Control clarified that, for "payment of cash in advance" for the commercial sale of U.S. agricultural exports to Cuba, vessels can leave U.S. ports as soon as a foreign bank confirms receipt of payment from Cuba. (See *U.S. Agricultural Exports*, below.)

On July 28, 2005, Secretary of State Condoleezza Rice appointed Caleb McCarry as the State Department's new Cuba Transition Coordinator to direct U.S. government "actions in support of a free Cuba."

On July 20, 2005, the House approved H.R. 2601, the FY2006-FY2007 State Department authorization bill, which authorizes $37.7 million for Cuba broadcasting for FY2006 and $29.9 million for FY2007, including funds for an aircraft to improve radio and television transmission. The bill also includes a provision authorizing funds for the U.S. Interests Section in Havana to disseminate the names of U.S. fugitives residing in Cuba and any rewards for their capture.

On July 20, 2005, the Senate approved its version of H.R. 3057, the FY2006 Foreign Operations appropriations bill, with a provision providing $5 million in International Narcotics Control and Law Enforcement (INCLE) funds for preliminary work to establish cooperation with Cuba on counter-narcotics matters. The House version of the bill, approved June 29, 2005, provides that no INCLE funds may be made available for assistance to the Cuban government. The Senate version of H.R. 3057 also appropriates $37.7 million for Cuba broadcasting, including assistance for the procurement of an aircraft to transmit radio and television programming. On July 19, 2005, the Senate defeated (33-66) S.Amdt 1294 (Dorgan) that would have eliminated funding for television broadcasting to Cuba. The House includes appropriations for Cuba broadcasting in H.R. 2862, the FY2006 Science, State, Justice, Commerce and Related Agencies Appropriations Act, which it passed on June 16, 2005. The report to the bill (H.Rept. 109-118) includes a committee recommendation for $27.9 million for Cuba broadcasting, $10 million below the Administration's request, and does not provide funding for an aircraft to transmit Radio and TV Marti programming.

On July 7-8, 2005, Hurricane Dennis killed 16 people and caused an estimated $1.4 billion in damage to housing, infrastructure, and agriculture. The storm caused significant damage to the national power grid and resulted in electrical outages. The Cuban government rejected a U.S. offer of $50,000 for immediate humanitarian assistance. Nevertheless, the U.S. Agency for International Development authorized up to $100,000 in grants to non-governmental organizations to respond to the needs of the victims of Hurricane Dennis.

On June 30, 2005, the House passed H.R. 3058, the FY2006 Transportation appropriations bill, with a provision (Section 945) that would prohibit funds from being used to implement tightened restrictions on "payment of cash in advance" for U.S. agricultural exports to Cuba. The Administration's Statement of Policy on the bill maintains that the President would veto the bill if it contained this provision. Several House amendments to H.R. 3058 that would have eased sanctions further failed during House floor consideration: H.Amdt. 420 (Davis) on family travel, by a vote of 208-211; H.Amdt. 422 (Lee) on educational travel, by a vote of 187-233; and H.Amdt. 424 (Rangel) on the overall embargo, by a vote of 169-250. An additional amendment on religious travel, H.Amdt. 421 (Flake), was withdrawn, and an amendment on family travel by members of the U.S. military, H.Amdt. 419 (Flake), was ruled out of order for constituting legislation in an appropriations bill. The introduction of H.Amdt. 419 was prompted by the case of a U.S. military

member who served in Iraq, Sgt. Carlos Lazo, who is prohibited from visiting his two sons in Cuba because he last visited there in 2003.

On June 29, 2005, during Senate consideration of H.R. 2361, the FY2006 Interior, Environment, and Related Agencies Appropriations Act, the Senate rejected (60-35; a two-thirds majority vote was required) a motion to suspend the rules with respect to S.Amdt. 1059 (Dorgan), which would have allowed travel to Cuba under a general license for the purpose of visiting a member of the person's immediate family for humanitarian reasons. The amendment was then ruled out of order.

On June 15, 2005, H.Amdt. 270 (Flake) to H.R. 2862 failed by a vote of 210-216. The amendment would have eased restrictions on sending gift parcels to Cuba.

On May 20-21, 2005, the Assembly to Promote Civil Society held two days of meetings in Havana with some 200 participants. The Assembly issued a ten-point resolution laying out an agenda for political and economic change in Cuba. Both H.R. 193 (Diaz-Balart, Mario), approved by the House on May 10, and S.Res. 140 (Martinez), approved by the Senate on May 17, expressed support for the Assembly's meetings and its organizers.

On May 17, 2005, in Miami, U.S. Immigration and Customs Enforcement (ICE) arrested Luis Posada Carriles, who allegedly was involved in the 1976 bombing of a Cuban airliner. ICE subsequently charged Posada with illegally entering the United States. He faces a hearing before an immigration judge on June 13. On April 13, 2005, a lawyer for Posada (who had recently snuck into the United States from Mexico) announced that Posada would be seeking asylum in the United States because of a well-founded fear of persecution if returned to Cuba. Venezuela has called for Posada's extradition. Posada, a Venezuelan citizen, had been imprisoned there, but escaped in 1985.

On April 27, 2005, the House approved H.Con.Res. 81 (Menendez) — by a vote of 398 to 27, 2 present — regarding the two-year anniversary of Cuba's human rights crackdown.

On April 14, 2004, the U.N. Commission on Human Rights approved a resolution (by a vote of 21 to 17, with 15 abstentions) that invited the personal representative of the High Commissioner for Human Rights to report on the status of Cuba's human rights situation.

On April 6, 2005, the Senate tabled S.Amdt. 284 (Dorgan) to S. 600 (Lugar), the FY2006 and FY2007 Foreign Affairs Authorization Act, by a vote of 65-35, which would have prohibited funds from being used for television broadcasting to Cuba.

On March 16, 2005, the House Agriculture Committee held a hearing on the issue of the Treasury Department's recent clarification of "payment of cash in advance" for U.S. agricultural exports to Cuba.

On March 3, 2005, the House International Relations Committee's Subcommittees on the Western Hemisphere and on Africa, Global Human Rights,

and International Organizations held a hearing on the second anniversary of Cuba's human rights crackdown.

On February 22, 2005, the Treasury Department's Office of Foreign Assets Control amended the Cuba embargo regulations to clarify that U.S. agricultural sales to Cuba under "payment of cash in advance" terms now requires payment before shipment from U.S. ports instead of the practice of making payment upon delivery. The regulations, which went into effect on March 24, 2005, were published in the *Federal Register* on February 25, 2005.

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 79 on August 13, 2005, 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 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 Political Bureau 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 of the Council. Legislative authority is vested in a National Assembly of People's Power, currently with 609 members, that meets twice annually for brief periods. When the Assembly is not in session, a Council of State acts on its behalf. As President of the Council of State, Castro also is head of state and head of government. 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 5th Congress (the prior one was held in 1991) in which the party reaffirmed its commitment to a single party state and reelected Fidel and Raúl 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."[1]

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[1] "Special Session of the National Assembly, A Transcendent Yes," *Granma International*, (continued...)

Outlook

Although many observers believe that the eventual demise of Cuba's 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 Raúl. They point to Cuba's strong security apparatus and the extraordinary system of controls that prevents dissidents from gaining popular support.

Fidel's brother Raúl, as First Vice President of the Council of State, is the officially designated successor, and would become head of state and head of government with Fidel's departure. Raúl — who turned 74 in June 2005 — also serves as First Vice President of the Council of Ministers, as Minister of the Revolutionary Armed Forces (FAR), and as second secretary of the Communist Party.

There are several potential scenarios for Cuba's future when Fidel Castro either dies in office or departs the political scene because of age or declining heath. These fit into three broad categories: the continuation of a communist government; a military government; or a democratic transition or fully democratic government. According to most observers, the most likely scenario, at least in the short term, is a successor communist government led by Raúl Castro. This is true for a variety of reasons, but especially because of Raúl's designation by Fidel as successor in the party and his position as leader of the FAR, which, since 1989, has been in control of the government's security apparatus. The scenario of a military-led government is viewed by some observers as a possibility only if a successor communist government fails because of divisiveness or political instability. For many observers, the least likely scenario upon Fidel's death or departure is a democratic or democratic transition government. With a strong totalitarian security apparatus, the Castro government has successfully impeded the development of independent civil society, with only a small and tightly regulated private sector, no independent labor movement, and no unified political opposition. (For further information, see CRS Report RS22228, *Cuba after Fidel Castro: Issues for U.S. Policy*.)

Human Rights

Overview. 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, with a severe crackdown on activists in 2003.

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[1] (...continued)
June 30, 2002, p. 1.

The 2004 State Department human rights report asserted that Cuba's human rights record remained poor, with the government committing numerous serious abuses, including the imprisonment of human rights activists and other political dissidents; the abuse of detainees and prisoners; denial of freedoms of speech, press, assembly, and association; and targeted "acts of repudiation" against those who disagreed with the government. The report noted 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.

In 2004, the Cuban government released, for health reasons, 14 of the "group of 75" political dissidents imprisoned in March 2003, while 61 remain in prison. At the same time that the government released some political prisoners, it has continued its harassment of democracy and human rights activists, including the arrest of 22 dissidents during the year on such charges as disrespect for authority, public disorder, disobedience, and resisting arrest. As noted in the State Department report, human rights groups in Cuba estimated the number of political prisoners at approximately 300, compared to the 2003 estimate of between 300-400.

In 2005, although the government allowed some opposition gatherings to take place, most notably the May 20-21 meetings of the Assembly to Promote Civil Society, it continued to suppress other dissent through harassment, threats, intimidation, and detention. According to Amnesty International, more than 50 Cubans were detained for their role in organizing or participating in demonstrations on July 13 and 22, 2005, and 15 of those remain in detention. In early August, three of those arrested in July — René Gomez Manzano, Oscar Mario González, and Julio César López — were informed that they would be tried on charges of working to undermine the government.

On October 26, 2005, a Cuban human rights group known as the Ladies in White (*Damas de Blanco*) received the Sakharov Prize for Freedom of Thought from the European Parliament. The group, formed after Cuba's March 2003 crackdown, consists of wives, mothers, and sisters of dissidents who conduct peaceful protests calling for the unconditional release of political prisoners.

Severe 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."[2] Some 75 activists were arrested, subjected to summary trials and prosecutions, and sentenced to prison terms ranging from 6 to 28 years. Foreign

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[2] Nancy San Martin, "Cuba: Dissidents Were Eroding Socialist System," *Miami Herald*, April 10, 2003.

journalists and diplomats were excluded from the trials. Among the activists were 27 independent journalists, including Raúl 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 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.

Analysts see a variety of potential reasons for the 2003 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 Raúl 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, and 4 other political prisoners, for health reasons. 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; Raúl 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. The prisoners were only released on parole (*licencia extrapenal*) so that they could be incarcerated again at any time. Human rights groups like Human Rights Watch and Amnesty International have expressed concerns that the prisoners were not released unconditionally.

Varela Project and the National Dialogue. Named for the 19th 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 Payá, 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."[3]

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 2003 human rights crackdown, which included the arrest of 21 project activists. On October 3, 2003, Oswaldo Payá delivered more than 14,000 signatures to Cuba's National Assembly, again requesting a referendum on democratic reforms.

Since December 2003, Payá has been involved in another project known as the National Dialogue with the objective of getting Cubans involved in the process of discussing and preparing for a democratic transition. According to Payá, thousands of Cuban have met in dialogue groups to discuss a working document covering such themes as economic change, political and institutional change, social issues, public health and the environment, public order and the armed forces, media, science and culture, reconciliation and reuniting with the exile community. The next step will be the drafting of a transition program document to be presented to Cubans for discussion and to help prepare for a future transition.[4]

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[3] "Text of Jimmy Carter's Speech, Broadcast Live to Cuban People," *Associated Press*, May 15, 2002.

[4] Oswaldo Payá, "Dissidents' Goal: A National Dialogue," *Miami Herald*, August 9, 2005.

Assembly to Promote Civil Society. Led by three prominent Cuban human rights activists — Marta Beatriz Roque, Rene Gomez Manzano, and Felix Bone — the Assembly to Promote Civil Society held two days of meetings in Havana on May 20-21, 2005, with some 200 participants. The date was significant because May 20 is Cuba's independence day. Many observers had expected the government to prevent or disrupt the proceedings. The Cuban government did prevent some Cubans and foreigners from attending the conference, but overall the meeting was dubbed by its organizers as the largest gathering of Cuban dissidents since the 1959 Cuban revolution.[5] The Assembly issued a ten-point resolution laying out an agenda for political and economic change in Cuba.[6] Among its provisions, the resolution called for the release of all political prisoners, demanded respect for human rights, demanded the abolition of the death penalty, and endorsed a 1997 dissident document entitled the "Homeland Belongs to Us All" on political and economic rights.[7]

United Nations Commission on Human Rights (UNCHR). Since 1991, the UNCHR has adopted resolutions every year, with the exception of 1998, expressing concern about Cuba's poor human rights situation and calling for Cuba to cooperate with the Commission regarding its investigation of the human rights situation. In April 2004, the UNCHR resolution — approved by a vote of 22-21, with 10 abstentions — had stronger language rebuking Cuba than in 2003. It noted that the Commission "deplores the events which occurred last year in Cuba involving verdicts against certain political dissidents and journalists." Sponsored by Honduras, the resolution again urged Cuba to cooperate with the personal representative of the U.N. High Commissioner for Human Rights. In addition to the United States, the countries voting in favor of the resolution included most European nations on the Commission as well as several Asian and Latin America nations.

For the 2005 session, the UNCHR approved a resolution on April 14, 2005, on Cuba's human rights situation by a vote of 21 to17, with 15 abstentions, that was supported by European nations and several Latin American nations. The resolution, which was much weaker than that approved in 2004, simply invited the personal representative of the High Commissioner for Refugees to report on the current status of Cuba's human rights situation.

Legislative Initiatives. In the 109th Congress, four resolutions have been approved regarding Cuba's human rights situation.

H.Con.Res. 81 (Menendez), passed by the House on April 27, 2005, expresses the sense of Congress regarding the two-year anniversary of the human rights crackdown in Cuba. The resolution demanded that Cuba release all political prisoners; legalize all political parties, labor unions, and press; and hold free and fair

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[5] Nancy San Martin, "'A Triumph' in Cuba as Dissidents Gather," *Miami Herald*, May 21, 2005.

[6] The full text of the resolution is available in Spanish from Cubanet: [http://www.cubanet.org/ref/dis/052305.htm]

[7] See the full text of "The Homeland Belongs to Us All" at [http://www.cubanet.org/CNews/y97/jul97/homdoc.htm].

elections. It further calls for all UN members to vote against Cuba's membership on the UNCHR.

Two resolutions — H.Res. 193 (Diaz-Balart, Mario), approved by the House on May 10, 2005, and S.Res. 140 (Martinez), approved by the Senate on May 17 — express support of the organizers and participants of the May 20, 2005, meeting in Havana of the Assembly to Promote Civil Society. The resolutions also urge the international community to support the Assembly and its mission to bring democracy to Cuba.

Another resolution, H.Res. 388 (Diaz-Balart, Lincoln), approved by the House on September 29, 2005, expresses the sense of the House regarding the Cuban government's crackdown against dissidents in July 2005. The measure also calls on the European Union to reexamine its current policy toward the Cuban regime and calls on the U.S. Permanent Representative to the United Nations and other international organizations to work with member countries of the UNCHR to ensure a strong resolution on Cuba at the 62nd session of the UNCHR in 2006.

In terms of oversight, two subcommittees of the House International Relations Committee (Western Hemisphere and Africa, Global Human Rights, and International Organizations) held a March 3, 2005, hearing on the second anniversary of Cuba's human rights crackdown, featuring testimony by the State Department, human rights organizations, and political dissidents in Cuba.

In addition to resolutions on, and oversight of, Cuba's 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.

Economic Conditions[8]

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 high of 7.8% in 1996.

Growth rates have slowed somewhat since 2001, with a high of 4% growth in 2004.[9] 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

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[8] For an overview of the Cuban economy, see CRS Report RL30837, *Cuba: An Economic Primer*, by Ian F. Fergusson.

[9] "Cuba Country Report," Economist Intelligence Unit (EIU) Country Reports, October 2005.

homes and severely hurt the agricultural sector. 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.

For 2005, the economic growth forecast is over 5%, but this could be negatively affected by the widespread damage caused by Hurricane Dennis that struck in July and Hurricane Wilma that struck in October. Hurricane Dennis killed 16 people and resulted in $1.4 billion in damages to housing, infrastructure, and agriculture. The storm damaged some 120,000 homes as well as Cuba's national power grid causing significant electrical outages. Hurricane Wilma caused significant flooding in Havana. Prior to the hurricanes, a severe drought in eastern Cuba had damaged the agricultural sector. On the positive side, economic growth, will reportedly benefit from the growth of the tourism, nickel, and oil sectors. Cuba is also benefitting from a preferential oil agreement with Venezuela, which provides Cuba with 90,000 barrels of oil a day. Promises of substantial Chinese investment could further boost Cuba's nickel production.[10]

Cuba has expressed pride for the nation's accomplishments in health and education. The World Bank estimates that in 2003, 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 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.

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[10] "Cuba Country Report," Economist Intelligence Unit (EIU) Country Reports, July 2005; "Hurricane Dennis: Storm Causes $1.4 billion in Damages, Wrecks Agriculture," CubaNews, August 2005.

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 the government has backtracked on some of 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.[11]

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. Beginning on April 9, 2005, convertible pesos are no longer on par with the U.S. dollar, but instead are linked to a basket of foreign currencies. This will reduce the value of dollar remittances sent to Cuba and will provide more hard currency to the Cuban government.[12]

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 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 shootdown 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

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[11] Larry Luxner, "New Decree Limits Dollar Transactions as Cuba Tightens Controls Once Again," *CubaNews,* April 2004.

[12] Larry Luxner, "Cuba's 'Convertible Peso' No Longer Linked to U.S. Dollar," *CubaNews*, April 2005, p. 3.

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 106th 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 shootdown 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

Overview. 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 was considerable reaction to the Administration's June 2004 tightening of restrictions for family visits and other

categories of travel. More recently, U.S. agricultural exporters and some Members of Congress have opposed the Administration's February 2005 action by the Treasury Department's Office of Foreign Assets Control (OFAC) to apply a more narrow meaning to the term "payment of cash in advance" to require that payment for U.S. agricultural exports is received prior to their shipment. They fear that millions of dollars in U.S. agricultural exports to Cuba could be jeopardized. Although in late July 2005, OFAC clarified the February amendment to mean that vessels can leave U.S. ports as soon as a foreign bank confirms receipt of payment from Cuba, it is unclear what effect this will have on the level of U.S. agricultural exports to Cuba, which have declined 22% in 2005.

Administration Actions: 2001-2003. 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."[13] 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 "unlicenced 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;[14] 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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[13] The White House, "*Remarks by the President in Recognition of Cuba Independence Day*", May 18, 2001.

[14] 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."[15]

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 and 2005. The Bush Administration took several measures in 2004 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.[16] 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.[17]

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 then 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. The President directed that up to $59 million be committed to implement key recommendations of the Commission, including support for democracy-building activities and for airborne broadcasts of Radio and TV Marti to Cuba. 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. Subsequent regulations issued by the Treasury and Commerce Departments in June 2004 implemented these new sanctions. (The full Commission report is on the State Department website at [http://www.state. gov/p/wha/rt/cuba/commission/2004/].)

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[15] "President Bush Announced Initiative for a New Cuba," Remarks by the President on Cuba Policy Review, White House, May 20, 2002.

[16] 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.

[17] 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.

On July 28, 2005, Secretary of State Condoleezza Rice (the new chair of the Commission) appointed Caleb McCarry as the State Department's new Cuba Transition Coordinator to direct U.S. government "actions in support of a free Cuba." As called for by the Cuba Commission's report, the position is intended to send a signal of the unwillingness of the United States to accept the Cuban government's succession strategy. The Coordinator is tasked with facilitating expanded implementation of democracy projects and to continue regular planning for future transition assistance contingencies.

In 2005, the Administration has continued to tighten U.S. economic sanctions against Cuba by further restricting the process of how U.S. agricultural exporters may be paid for their sales. On February 22, 2005, the Treasury Department's Office of Foreign Assets Control amended the Cuba embargo regulations to clarify that the term of "payment of cash in advance" for U.S. agricultural sales to Cuba means that the payment is to be received prior to the shipment of the goods. This differs from the practice of being paid before the actual delivery of the goods, a practice that had been utilized by most U.S. agricultural exporters to Cuba since such sales were legalized in late 2001.

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 15, 2005, by determining that it "is necessary to the national interests of the United States and will expedite a transition to democracy in Cuba." 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.[18] 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

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[18] "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.

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 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.[19] 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.[20]

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[19] "EU, U.S. Take Sharply Different Tacks on Dispute Resolution," *Inside U.S. Trade*, June 22, 2001.

[20] "Is the US After a Helms-Burton Solution?" *Cuba Trader*, July 14, 2003.

Section 211 Trademark Provision[21]

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 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.[22] 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

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[21] For additional information, see CRS Report RS21764, *Restricting Trademark Rights of Cubans: WTO Decision and Congressional Response*, by Margaret Mikyung Lee.

[22] United States Trade Representative, "WTO Issues Report Upholding Key Aspects of U.S. Law in Trademark Dispute," Press Release, January 2, 2002.

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.[23] That deadline has been extended several times, however, since no legislative action has been taken to bring Section 211 into compliance with the WTO ruling. Since no action was taken by the end of the 108th Congress, the deadline again was extended from December 31, 2004 until June 30, 2005. On July 1, 2005, in an EU-U.S. bilateral agreement, the EU agreed that it would not request authorization to retaliate at this time, but reserved the right to do so at a future date, and the United States agreed not to block a future EU request.[24]

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 also 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."[25] 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.[26] They maintain that Cuba could retaliate against U.S. companies under the Inter-American Convention for Trademark and Commercial Protection.

In the 108th Congress, 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 (Domenici) and H.R. 4225 (Smith of Texas), as well as those calling for the repeal of Section 211 as advanced by S. 2002 (Baucus) and H.R. 2494 (Rangel), but no action was taken on any of these measures in the 108th Congress.

To date in the 109th Congress, several legislative initiatives would repeal the Section 211 trademark provision from law, while two identical bills would advance the narrow fix to Section 211 in order to comply with the WTO ruling. H.R. 3372 (Flake) and S. 1604 (Craig) would repeal Section 211. Two bills that would lift the overall embargo, H.R. 208 (Serrano) and H.R. 579 (Paul), include provisions that would repeal Section 211. In addition, two identical bills that would facilitate U.S. agricultural sales to Cuba, H.R. 719 (Moran of Kansas) and S. 328 (Craig), also have provisions that would repeal Section 211. A proposed amendment (S.Amdt. 281) to S. 600 (Lugar), the FY2006 and FY2007 Foreign Affairs Authorization Act consists of the language of S. 328, including a provision that would repeal Section 211. In

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[23] "U.S., EU Agree on Deadline for Complying with Section 211 WTO Finding," *Inside U.S. Trade*, April 12, 2002.

[24] "Japan, EU Suspend WTO Retaliation Against U.S. in Two Cases," *Inside U.S. Trade*, July 15, 2005.

[25] 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.

[26] "USA-Engage Joins Cuba Fight," *Cuba Trader*, April 1, 2002.

contrast, two identical bills — S. 691 (Domenici) and H.R. 1689 (Feeney) — would advance the narrow fix in which Section 211 would be amended so that it also applies to U.S. companies.

Agricultural Exports

Under U.S. sanctions, commercial agricultural exports to Cuba have been allowed for several years, but with numerous restrictions and licensing requirements. The 106th Congress passed the Trade Sanctions Reform and Export Enhancement Act of 2000 or TSRA (P.L. 106-387, Title IX) that allows for one-year export licenses for selling agricultural commodities to Cuba, although no U.S. government assistance, foreign assistance, export assistance, credits, or credit guarantees are available to finance such exports. TSRA, furthermore, denies exporters access to U.S. private commercial financing or credit; all transactions must be conducted in cash in advance or with financing from third countries. TSRA 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 agricultural sales. Regulations implementing the new provisions were published in the *Federal Register* on July 12, 2001.

In November 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, which requires that the sales be conducted in "payment of cash in advance."

OFAC ultimately amended the Cuba embargo regulations on February 22, 2005, to clarify that TSRA's term of "payment of cash in advance" means that the payment is received by the seller or the seller's agent prior to the shipment of the goods from the port at which they are loaded. The new regulations, published in the *Federal Register* on February 25, went into effect on March 24, 2005, providing a 30-day window for exporters to comply. U.S. agricultural exporters and some Members of Congress strongly objected that the action constitutes a new sanction that violates the intent of TSRA and could jeopardize millions of dollars in U.S. agricultural sales to Cuba. OFAC Director Robert Werner maintains that the clarification "conforms to the common understanding of the term in international trade."[27]

On July 29, 2005, OFAC clarified that, for "payment of cash in advance" for the commercial sale of U.S. agricultural exports to Cuba, vessels can leave U.S. ports as soon as a foreign bank confirms receipt of payment from Cuba. OFAC's action would reportedly ensure that the goods would not be vulnerable to seizure for unrelated claims while still at the U.S. port. Supporters of overturning OFAC's February 22, 2005 amendment, such as the American Farm Bureau Federation, were

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[27] U.S. Department of the Treasury, Testimony of Robert Werner, Director, OFAC, before the House Committee on Agriculture, March 16, 2005.

pleased by the clarification but indicated that they would still work to overturn the February rule.[28]

Since late 2001, Cuba has purchased over $1 billion 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, $259 million in 2003, $400 million in 2004, and $245 million in the first eight months of 2005, the majority in agricultural products. U.S. exports to Cuba for January to August 2005 declined about 22% from the same time period in 2004.[29] It is unclear what the effect of OFAC's late July 2005 clarification regarding "payment of cash in advance" will have on the level of U.S. agricultural exports to Cuba.

Some groups favor further easing restrictions on agricultural 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.[30] 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.[31]

Opponents of further easing restrictions on agricultural 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 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 108th Congress, several appropriations measures had provisions that would have eased sanctions related to the export of agricultural commodities, but none of these provision were enacted into law.

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[28] Christopher S. Rugaber, "Treasury Clarifies Cuba Farm Export Rule, and Baucus Relents on Nominees," *International Trade Reporter*, August 4, 2005.

[29] World Trade Atlas. Department of Commerce Statistics.

[30] "Ag Groups Split Over Trade With Cuba," *Congress Daily AM*, National Journal, February 11, 2003.

[31] "Farm Equipment Exports Likely to Face Tough Opposition from White House, Congress," *Cuba Trader*, Vol. III, No. 7, February 17, 2003.

In the 109th Congress, attention to date has focused on overturning the Treasury Department's new regulations that clarify the meaning of "payments of cash in advance" for U.S. agricultural exports to Cuba under TSRA. The House Agriculture Committee held a hearing on the issue on March 16, 2005, featuring the OFAC Director and representatives of U.S. companies exporting agricultural commodities to Cuba.

In legislative action, the House- and Senate-passed versions of the FY2006 Treasury appropriations bill, H.R. 3058, have identical provisions (Section 945 in the House version and Section 719 in the Senate version) that would prohibit funds from being used to implement the Administration's February 25, 2005 amendments to the Cuban Assets Control Regulations that tightened restrictions on "payments of cash in advance" for U.S. agricultural exports to Cuba. The Administration's Statements of Policy on the bill, for both the House and Senate versions, maintain that the President would veto the bill if the final version contained such a provision.

Among other legislative initiatives in the 109th Congress, H.R. 1339 (Emerson) and S. 634 (Chambliss), both introduced March 16, 2005, would clarify that TSRA's "payment of cash in advance" term means that the payment by the purchaser and the receipt of such payment to the seller occurs prior to the transfer of title of the commodity and the release of control of the commodity to the purchaser. A similar provision is included in H.R. 719 (Moran of Kansas) and S. 328 (Craig), the Agricultural Export Facilitation Act of 2005, both introduced February 9, 2005. These two bills also include provisions that provide for a general license for travel transactions related to the marketing and sale of agricultural products, as opposed to the current requirement of a specific license for such travel transactions. The bills also express the sense of Congress that the Secretary of State should issue visas for the temporary entry of Cuban nationals to conduct activities related to purchasing U.S. agricultural commodities. A proposed amendment — S.Amdt. 281 (Baucus) — to S. 600 (Lugar), consists of the language of S. 328, the Agricultural Export Facilitation Act of 2005. Two additional bills, H.R. 208 (Serrano) and H.R. 579 (Paul), would lift the overall embargo, including restrictions on agricultural trade with Cuba.

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 June 2004 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.

In April 2005, OFAC cracked down on certain religious organizations promoting licensed travel to Cuba and warned them not to abuse their license by taking individuals not affiliated with the religious organizations. Press reports indicate that OFAC also limited the number of people who can travel under the

auspices of these groups to 25 every three months.[32] OFAC's action were prompted by reports that groups practicing the Afro-Cuban religion Santería had been taking large groups to Cuba as a means of skirting U.S. travel restrictions.[33]

There was 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. In 2005, attention has been focused on the case of a U.S. military member who served in Iraq, Sgt. Carlos Lazo, who is prohibited by the travel restrictions from visiting his two sons in Cuba since he had visited them in 2003.[34]

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 108th Congress, several appropriations measures had provisions that would have eased Cuba travel restrictions in several ways, but none of these provisions was enacted into law.

In legislative action in the 109th Congress, on June 30, 2005, the House rejected three amendments to the FY2006 Transportation appropriations bill, H.R. 3058, that would have eased Cuba travel restrictions: H.Amdt. 420 (Davis) on family travel, by a vote of 208-211; H.Amdt. 422 (Lee) on educational travel, by a vote of 187-233; and H.Amdt. 424 (Rangel) on the overall embargo, by a vote of 169-250. An

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[32] Oscar Corral, "Groups Warned to Obey Travel Limits," *Miami Herald*, April 8, 2005

[33] Oscar Corral, "Is Santería Used as Ploy to Skirt Travel Rules?," *Miami Herald*, February 27, 2005

[34] Jim Abrams, "Veteran of Iraq War Denied Trip Home to Cuba," *Associated Press*, June 29, 2005.

additional amendment on religious travel, H.Amdt. 421 (Flake), was withdrawn, and an amendment on travel by members of the U.S. military, H.Amdt. 419 (Flake), was ruled out of order for constituting legislation in an appropriations bill. The introduction of H.Amdt. 419 was prompted by the case of U.S. military member Sgt. Carlos Lazo, noted above, who wants to visit his two sons in Cuba. In Senate action, during June 29, 2005, consideration of H.R. 2361, the FY2006 Interior appropriations bill, the Senate rejected a motion to suspend the rules with respect to S.Amdt. 1059 (Dorgan), which would have allowed travel to Cuba under a general license for the purpose of visiting a member of the person's immediate family for humanitarian reasons. The Dorgan amendment had also been prompted by the case of Sgt. Lazo.

Among other legislative initiatives in the 109th Congress, two bills would specifically lift overall restrictions on travel to Cuba: S. 894 (Enzi) and H.R. 1814 (Flake); H.R. 2617 (Davis) would prohibit any additional restrictions on per diem allowances, family visits to Cuba, remittances, and accompanied baggage beyond those that were in effect on June 15, 2004; and H.R. 3064 (Lee) would prohibit the use of funds available to the Department of the Treasury to implement regulations from June 2004 that tightened restrictions on travel to Cuba for educational activities. H.Con.Res. 206 (Serrano), introduced in the aftermath of Hurricane Dennis that struck Cuba on July 8, 2005 (causing 16 deaths and significant damage), would express the sense of Congress that the President should temporarily suspend restrictions on remittances, gift parcels, and family travel to Cuba to allow Cuban-Americans to assist their relatives.

Two bills that would lift the overall embargo on trade and financial transaction with Cuba, H.R. 208 (Serrano) and H.R. 579 (Paul), would include removing restrictions on travel to Cuba. Two identical bills dealing with easing restrictions on exporting agricultural commodities to Cuba, H.R. 719 (Moran of Kansas) and S. 328 (Craig), include provisions that provide for a general license for travel transactions related to the marketing and sale of agricultural products, as opposed to the current requirement of a specific license for such travel transactions. Finally, pending amendments — S.Amdt. 281 (Baucus) and S.Amdt. 282 (Craig) — to S. 600 would add the language of S. 328, with a provision on travel transactions for the marketing and sale of agricultural products.

(For further information, including details on legislative action since the 106th 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 33 countries and less formal arrangements with 16 others, according to the Department of State. In 2003, Cuba began nationwide multi-agency anti-drug efforts: Operation Hatchet III, focusing on maritime and air interdiction; and Operation Popular Shield, focusing on investigations.

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 2005 International Narcotics Control Strategy Report, maintains that Cuban interest in engaging with the Coast Guard specialist has ebbed and flowed. According to the report, Cuba's National Anti-drug Directorate and its Border Guard have provided U.S. officials limited exposure to Cuban counternarcotics efforts, investigative case information on narcotics trafficking, and information on suspect vessels and aircraft.

In the past, Cuba has called for a bilateral anti-drug cooperation agreement with the United States.[35] 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.[36]

Legislative Initiatives. In the 108th Congress, 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

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[35] 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.

[36] Anthony Boadle, "U.S. Thanks Cuba, But Declines Anti-Drug Accord," *Reuters*, March 19, 2002.

government on counter-narcotics matters. Ultimately, neither provision was included in the FY2005 omnibus appropriations measure (P.L. 108-447, H.Rept. 108-792).

In the 109th Congress, the House-passed version of the FY2006 Foreign Operations appropriations bill, H.R. 3057, has a provision (Section 572) providing that no International Narcotics Control and Law Enforcement (INCLE) funds may be made available for assistance to the Cuban government. The Senate-passed version, in Section 6089, would provide $5 million in INCLE funds for preliminary work to establish cooperation with Cuba 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.

Cuba and Terrorism[37]

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 *Country Reports on Terrorism 2004* report (issued in April 2005), Cuba has "continued to actively oppose the U.S.-led coalition prosecuting the global war on terrorism," and "the Cuban government's actions and public statements run contrary to the spirit of the UN conventions on terrorism that it has signed."

The State Department report also noted that Cuba continued to provide limited support to Foreign Terrorist Organizations as well as safe haven for terrorists. The report maintained that Cuba provides safe haven to various Basque ETA members from Spain despite a November 2003 request from the Spanish government to deny them sanctuary. The report also maintained that Cuba provided safe haven and some degree of support to members of two Colombian insurgent groups, the Revolutionary Armed Forces of Colombia (FARC) and the National Liberation Army (ELN). (The State Department's 2002 and 2003 *Patterns of Global Terrorism* reports acknowledged, however, that Colombia acquiesced to this arrangement and that Colombia publicly said that it wanted Cuba's continued mediation with the ELN in Cuba.)

The 2004 report also noted that more than 70 fugitives from U.S. justice had taken refuge in Cuba. Many of these are accused of committing violent actions in

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[37] For further information, see CRS Report RL32251, *Cuba and the State Sponsors of Terrorism List*, by Mark P. Sullivan.

the United States, including Joanne Chesimard, who is wanted for the murder of a New Jersey State Trooper in 1973. In the 109th Congress, Section 101(1)(H) of House-passed H.R. 2601 authorized funds for the U.S. Interests Section in Havana to disseminate the names of U.S. fugitives residing in Cuba and any rewards for their capture. H.R. 332 (King) would amend the Cuban Liberty and Democratic Solidarity Act of 1996 to require that, in order to determine that a democratically elected government in Cuba exists, the government extradite to the United States individuals who are living in Cuba in order to escape prosecution or confinement for criminal offense committed in the United States.

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.[38] 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."[39] 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."[40]

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.[41] The Cuban government has, however, expressed concerns about the treatment of terrorist suspects at Guantanamo. (Also see "Guantanamo Naval Base" below.)

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[38] Andrew Cawthorne, "Cuba's Castro Urges U.S. to Keep Calm," Reuters, September 11, 2001.

[39] Kevin Sullivan, "Castro Warns About U.S. Military Plans," *Washington Post*, September 23, 2001, p. A38.

[40] Ibid.

[41] For more information, see CRS Report RL31367, *Treatment of "Battlefield Detainees" in the War on Terrorism*, by Jennifer Elsea.

Cuba and Biological Weapons? 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..."[42]

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.[43] 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.[44] In May 2003, the Center for Defense Information published a report on a delegation sent to Cuba that visited nine Cuban biotechnology facilities.[45]

In 2002, the State Department made controversial allegations that Cuba 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 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."[46] 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.[47]

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[42] United States Information Agency, "Text: Defense Secretary's Letter to Thurmond on Cuban Threat," May 6, 1998.

[43] Teo A. Babun, Jr., "A Business Guide to Cuba," *CubaNews*, Miami Herald Publishing Company, 1996, pp. 66-67.

[44] Michael Kranish, "Biotechnology; Incubating Biotech Cuba Becomes Biotech Hotbed," *Boston Globe*, May 15, 2002, p. D1.

[45] Glenn Baker, ed. *Cuban Biotechnology, A First-Hand Report*, Center for Defense Information, Washington, D.C. May 2003. 50 p.

[46] John R. Bolton, "Beyond the Axis of Evil: Additional Threats from Weapons of Mass Destruction," The Heritage Foundation, Heritage Lectures, May 6, 2002.

[47] David Gonzalez, "Carter and Powell Cast Doubt on Bioarms in Cuba," *New York Times*, (continued...)

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.[48]

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.[49] 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.[50]

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."[51] The *New York Times* reported on September 18, 2004 that the Bush Administration, using more stringent intelligence standards, had

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[47] (...continued)
May 14, 2002.

[48] Kevin Sullivan, "Carter Says He Was Told U.S. Had No Proof Cuba Shared Bioweapons Data," *Washington Post*, May 14, 2002, p. 14.

[49] 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? 107th Congress, June 5, 2002. S.Hrg. 107-736.

[50] James Risen and Douglas Jehl, "Expert Said to Tell Legislators He Was Pressed to Distort Some Evidence," *New York Times*, June 25, 2003.

[51] U.S. Congress. House International Relations Committee, "The Bush Administration and Nonproliferation: A New Strategy Emerges," Hearing, March 30, 2004. *Federal News Service*.

"concluded that it is no longer clear that Cuba has an active, offensive bio-weapons program."[52]

In 2005, the issue of Cuba and biological weapons received increased attention during the confirmation process for the nomination of State Department official John Bolton to become U.S. Ambassador to the United Nations. Among the concerns raised about Bolton were allegations that he sought to have two U.S. officials fired (a State Department Intelligence and Research Bureau analyst and the national intelligence officers for Latin America) who disagreed with him about Cuba's involvement in biological weapons.[53]

Cuba as the Victim of Terrorism. Cuba has been the target of various terrorist incidents over the years. In 1976, a Cuban plane was bombed, killing 73 people. In 1997, there were almost a dozen bombings in the tourist sector in Havana and in the Varadero beach area in which an Italian businessman was killed and several others were injured. Two Salvadorans were convicted and sentenced to death for the bombings in March 1999, and three Guatemalans were sentenced to prison terms ranging from 10-15 years in January 2002. Cuban officials maintain that Cuban exiles funded the bombings.

In November 2000, four anti-Castro activists were arrested in Panama for a plot to kill Fidel Castro. One of the accused, Luis Posada Carriles, was allegedly involved in the 1976 bombing of a Cuban airliner.[54] The four stood trial in March 2004 and were sentenced on weapons charges in the case to prison terms ranging from seven to eight years. In late August 2004, Panamanian President Mireya Moscoso pardoned the four men before the end of her presidential term. Three of the men are U.S. citizens and traveled to Florida, where they received strong support from some in the Cuban American community, while Posada Carriles reportedly traveled to another country. U.S. State Department officials did not criticize President Moscoso's pardon of the four, but maintained that they did not lobby Panama for the pardons.[55]

On April 13, 2005, Posada's lawyer said that his client, reportedly in the United States for a month after sneaking in across the Mexican border, would seek asylum in the United States because he has a "well-founded fear of persecution" for his opposition to Fidel Castro.[56] Posada, a Venezuelan citizen, had been imprisoned in Venezuela for the bombing of the Cuban airliner in 1976, but reportedly was allowed to "escape" from prison in 1985 after his supporters paid a bribe to the

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[52] Steven R. Weisman, "In Stricter Study, U.S. Scales Back Claim on Cuba Arms," *New York Times*, September 18, 2004.

[53] "Cuba's Alleged Bio-Weapons Program," *Miami Herald*, April 26, 2005.

[54] Frances Robles, "An Old Foe of Castro Looks Back on His Fight," *Miami Herald*, September 4, 2003.

[55] George Gedda, "Terrorists or Liberators?," *Washington Times*, September 4, 2004.

[56] Alfonso Chardy and Nancy San Martin, "Lawyer Expects Posada to Show Soon," *Miami Herald*, April 14, 2005.

prison warden.[57] He had been acquitted for the bombing but remained in prison pending a prosecutorial appeal.[58] Posada also reportedly admitted, but later denied, involvement in a string of bombings in Havana in 1997, one of which killed an Italian tourist.[59] U.S. Immigration and Customs Enforcement (ICE) arrested Posada on May 17, 2005, and subsequently charged him with illegally entering the United States. A Department of Homeland Security press release indicated that ICE does not generally deport people to Cuba or countries believed to be acting on Cuba's behalf.[60] Venezuela requested Posada's extradition and pledged that it would not hand Posada over to Cuba, but on September 26, 2005, a U.S. immigration judge ruled that Posada cannot be deported to Venezuela because he could be tortured.[61]

Guantanamo Naval Base[62]

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

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[57] Ann Louise Bardach, "Our Man's in Miami. Patriot or Terrorist?," *Washington Post*, April 17, 2005.

[58] While Posada was acquitted by a military court, a higher court ordered a new civilian trial Reportedly a first set of prosecutors recommended against charging Posada, but a second set of prosecutors took the case to trial, and Posada escaped during that time in 1985. See Oscar Corral, "Debate Focuses on Escape," *Miami Herald*, June 19, 2005.

[59] Oscar Corral and Alfonso Chardy, "Victim's Kin Oppose Posada Bid for Asylum," *Miami Herald*, May 7, 2005.

[60] Department of Homeland Security, Office of Public Affairs, Statement, May 17, 2005.

[61] Alicia Caldwell, "Judge Says Cuban Militant Can't Be Deported to Venezuela," *Associated Press*, September 28, 2005.

[62] 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.

considered as a contingency option to house Haitian migrants in the event of a mass exodus from Haiti.[63]

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 has objected to the U.S. presence at Guantanamo, it did not initially oppose the new mission of housing detainees. Defense Minister Raúl 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.[64] 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.[65] In January 2005, it denounced what it described as "atrocities" committed at the Guantanamo base.[66] Some Members of Congress have called on the Administration to close the U.S. detention facility at Guantanamo, while others support the continued use of Guantanamo to hold terrorist detainees.

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 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 FY2006 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.

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[63] Jerry Seper, "U.S. Prepares for Haitian Refugees; Guantanamo Could Hold 20,000," *Washington Times*, February 24, 2004.

[64] "Cuba Would Hand Over Escapees, Raul Castro Says," *Miami Herald*, January 20, 2002.

[65] For information on terrorist suspects held at Guantanamo, see CRS Report RL31367, *Treatment of "Battlefield Detainees" in the War on Terrorism*, by Jennifer Elsea; and CRS Report RS22173, *Detainees at Guantanamo Bay*, by Jennifer K. Elsea.

[66] Ana Radelat, "Cuba Turns Up Rhetoric on Guantanamo as UN Condemns Human Rights Abuses," *CubaNews*, April 2005.

TV Marti broadcasts from facilities in Cudjoe Key, Florida for four and one-half hours daily from 6:00 p.m. - 10:30 p.m. It also broadcasts 24 hours a day, seven days a week on the Hispasat satellite and is also available on the Internet 24 hours a day. Radio Marti broadcasts on short and medium wave (AM) channels for 24 hours Tuesday through Saturday, 23 hours on Sunday, and 19 hours on Monday. Surveys of Cubans have shown a Radio Marti listenership of 9% in 2000 and 5% in 2001.[67] Both Radio and TV Marti programming also is transmitted for several hours on Saturday via airborne broadcasts conducted by the Air Force (see *Airborne Broadcasts* below.)

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 104th 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 Panel on Radio and TV Marti, and by the State Department's Office of the Inspector General.[68] (For background on Cuba broadcasting through 1994, see CRS Report 94-636, *Radio and Television Broadcasting to Cuba: Background and Issues through 1994*, by Susan B. Epstein and Mark P. Sullivan.)

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[67] 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.

[68] 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 Polices and Procedures for Ensuring that Radio Marti Broadcasts Adhere to Applicable Requirements*, 99-IB-010, June 1999.

From FY1984 through FY2005, about $493 million has been spent for broadcasting to Cuba, with about $300 million for Radio Marti (since FY1984) and $193 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."[69] 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.

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).

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

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[69] Advisory Panel on Radio Marti and TV Marti, *Report of the Advisory Panel on Radio Marti and TV Marti*, Executive Summary, March 1994.

in 1983, Operation Desert Storm in 1990-1991, Kosovo in 1999, Operation Enduring Freedom in Afghanistan, and Operation Iraqi Freedom.[70] 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. Since August 2004, the aircraft has been used periodically to transmit Radio and TV Marti programming. Currently, the aircraft transmit programming for several hours on Saturday.

FY2006 Funding. The Administration is requesting $37.7 million for Cuba broadcasting in FY2006, about a $10 million increase from the $27.6 million appropriated for FY2005. The increase is for the Broadcasting Board of Governors to acquire and outfit an aircraft for dedicated airborne radio and television broadcasts to Cuba. According to the budget request, the aircraft would support 4 hours a day of Radio and TV Marti broadcasts with the goal of overcoming Cuban government jamming.

The report to the House-passed version of H.R. 2862 (H.Rept. 109-118), the FY2006 Science, State, Justice, Commerce, and Related Agencies Appropriations Act, includes a committee recommendation for $27.9 million for Cuba broadcasting, about $10 million below the Administration's request. According to the report, the committee does not provide funding for an aircraft to transmit Radio and TV Marti programming but assumes the continuation of periodic Commando Solo flights, operating within U.S. air space, for such transmissions. The House approved H.R. 2862 on June 16, 2005. In the Senate, appropriations for Cuba broadcasting is included in the Senate version of the FY2006 Foreign Operations appropriations bill, H.R. 3057 (S.Rept. 109-96). As approved by the Senate on July 20, 2005, the bill would provide $37.7 million for Cuba broadcasting, including funds for an aircraft to transmit Radio and TV Marti programming. During July 19, 2005, floor consideration, the Senate defeated (33-66) S.Amdt. 1294 (Dorgan) that would have eliminated funding for television broadcasting to Cuba.

In other legislative action, both H.R. 2601 and S. 600, the FY2006 and FY2007 Foreign Affairs Authorization Act, in Section 503 of each bill, would authorize the OCB to use additional AM frequencies as well as FM and shortwave frequencies for Radio Marti in order to help overcome Cuban jamming. House-passed H.R. 2601 (Section 106) would authorize the Administration's full request of $37.7 million for Cuba broadcasting for FY2006 and $29.9 million for FY2007, including funds for an aircraft to improve radio and television transmission and reception. S. 600 (Section 111) would authorize funding for Cuba broadcasting under the International Broadcasting Operations account, but without a specific earmark. During Senate floor consideration of S. 600 on April 6, 2005, the Senate rejected S.Amdt. 284 (Dorgan), by a vote of 65-35, that would have prohibited funds from being used for television broadcasting to Cuba.

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-

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[70] U.S. Air Force Fact Sheet, "EC-130E/J COMMANDO SOLO," April 2003.

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.

U.S. Funding to Support Democracy and Human Rights

Over the past several years, the United States provided assistance — primarily through the U.S. Agency for International Development (USAID), but also through the State Department — 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.[71] These efforts are funded through Economic Support Funds (ESF) in the annual foreign operations appropriations bill. In FY2001, $4.989 million was provided for various Cuba projects; $5 million was provided for FY2002; $6 million was provided for FY2003; and while almost $7 million was originally appropriated for FY2004, ultimately a total of $21.4 million was provided for the year through re-programming to fund democracy-building activities recommended by the Commission for Assistance to a Free Cuba.

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).

For FY2006, the Administration is requesting $15 million in ESF assistance for democracy activities for Cuba. According to the request, the funds will support USAID-administered programs with democracy and human rights groups, focusing on those groups that disseminate information to the Cuban people and those that provide humanitarian assistance to victims of political repression and their families. USAID will also continue to work with third-country non-governmental organizations in Latin America and Europe to raise awareness of Cuban government repression. Neither the House nor the Senate versions of H.R. 3057, the FY2006 Foreign Operations appropriations bill, address this issue.

In terms of authorization legislation, during April 6, 2005, Senate floor consideration of S. 600, the FY2006 and FY2007 Foreign Affairs Authorization Act, an amendment was proposed — S.Amdt. 319 (Ensign) — that would authorize not more than $15 million in assistance and other support "for individuals and

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[71] See USAID's Cuba program website: [http://www.usaid.gov/locations/latin_america_caribbean/country/cuba/].

independent nongovernmental organizations to support democracy-building efforts for Cuba" and up to $5 million for the OAS to support work on Cuba's human rights situation. The House-passed version of H.R. 2601 has a provision (Section 215) that would authorize $5 million for the State Department's Bureau of Educational and Cultural Affairs for a variety of U.S. government scholarship and exchange programs, with priority given to human rights dissidents, pro-democracy activists, and independent civil society members for participation in these programs.

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. So far in FY2005, NED has funded $864,000 in Cuba projects with money received from the State Department.

Migration Issues[72]

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. Amid 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 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

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[72] For more, see CRS Report RS20468, *Cuban Migration Policy and Issues*, by Ruth Ellen Wasem.

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.

Elian Gonzalez Case.[73] From late November 1999 through June 2000, national attention became focused on Cuban migration policy as a result of the Elian 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 should welcome those migrants fleeing communist Cuba whether or not they are able to make it to land.

The number of Cubans interdicted at sea by the U.S. Coast Guard has risen in recent years, from 931 in 2002 to 1,464 in 2003 and 1,499 in 2004. In the first 10 months of 2005, 2,368 Cubans were indicted, almost a 60% increase from the total number of Cubans interdicted in 2004.[74]

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.

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[73] For more information, see CRS Report RS20450, *The Case of Elian Gonzalez: Legal Basics*, by Larry M. Eig.

[74] U.S. Coast Guard, Alien Migrant Interdiction, Coast Guard Office of Law Enforcement, "Total Interdictions, Calender Year 1982 to Present," November 1, 2005.

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 a May 2004 report to Congress, 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."[75]

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 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.

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[75] 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.

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 20th 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.[76]

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.[77] 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 108th Congress

For a complete listing of legislative initiatives on Cuba in the 108th Congress, see CRS Report RL31740, *Cuba: Issues for the 108th Congress*, by Mark P. Sullivan.

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.

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.

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[76] U.S. Department of State. State Department Regular Briefing, Richard Boucher. January 7, 2004.

[77] "Migration Talks Cancelled," *Miami Herald*, January 8, 2004.

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 verison) 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 60th 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.

Legislative Initiatives in the 109th Congress

Human Rights and Democracy

H.Con.Res. 81 (Menendez). Expresses the sense of Congress regarding the two-year anniversary of the human rights crackdown in Cuba. Introduced March 2, 2005; approved by the House Committee on International Relations March 9, 2005. House passed (398-27, 2 present) April 27, 2005.

H.Res. 193 (Diaz-Balart, Mario). Expresses support of the House of Representatives to the organizers and participants of the May 20, 2005, meeting in Havana of the Assembly to Promote Civil Society. Introduced April 6, 2005; approved by the Committee on International Relations April 27, 2005. House passed (392-22, 1 present) May 10, 2005.

H.Res. 388 (Diaz-Balart, Lincoln). Expresses the sense of the House of Representatives regarding the Cuban government's extreme repression against members of Cuba's pro-democracy movement in July 2005; condemns gross human rights violations committed by the Cuban regime; calls on the Secretary of State to initiate an international solidarity campaign on behalf of the immediate release of all Cuban political prisoners; calls on the European Union to reexamine its current policy toward the Cuban regime; and calls on the U.S. Permanent Representative to the United Nations and other international organizations to work with member countries of the U.N. Commission on Human Rights (UNCHR) to ensure a strong resolution on Cuba at the 62nd session of the UNCHR. Introduced July 26, 2005. House passed (393-31) September 29, 2005.

H.Con.Res. 165 (Andrews). Expresses the sense of Congress that the embargo should not be lifted until the Cuban government agrees to decriminalize free speech, association, and movement and other elements crucial to the development of democracy and the protection of fundamental human rights; and calls on the Cuban government to immediately release all political prisoners in Cuba, eliminate all of Cuba's criminal laws that unnecessarily restrict fundamental human rights, respect fundamental human rights and immediately schedule free multiparty and internationally supervised elections. Introduced May 24, 2005; referred to the Committee on International Relations.

H.R. 3057 (Kolbe). FY2006 Foreign Operations, Export Financing, and Related Programs. Reported by House Committee on Appropriations June 24, 2005 (H.Rept. 109-152). House approved (393-32) June 29, 2005. Reported by Senate Committee on Appropriations June 30, 2005 (S.Rept. 109-96). Senate approved (98-1), amended, July 20, 2005. Conference to be held. The Administration requested $15 million in ESF assistance for democracy activities for Cuba. Neither the House nor the Senate versions address this issue. (Also see provisions on *Cuba Broadcasting* and *Anti-drug Cooperation* below.)

S.Res. 140 (Martinez). Expresses support of the Senate for the May 20, 2005 meeting in Havana of the Assembly to Promote Civil Society. Introduced May 12, 2005; Senate approved by unanimous consent May 17, 2005.

S. 600 (Lugar)/H.R. 2601 (Smith). Foreign Affairs Authorization Act, Fiscal Years 2006 and 2007. S. 600 introduced and reported by Senate Foreign Relations Committee March 10, 2005 (S.Rept. 109-35). H.R. 2601 introduced May 24, 2005; reported, amended, by House International Relations Committee July 13, 2005 (H.Rept. 109-168). House approved (351-78) July 20, 2005. As approved by the House, H.R. 2601 has a provision (Section 215) that would authorize $5 million for the State Department's Bureau of Educational and Cultural Affairs for a variety of U.S. government scholarship and exchange programs, with priority given to human rights dissidents, pro-democracy activists, and independent civil society members for participation in these programs. During Senate consideration of S. 600, S.Amdt. 319 (Ensign) offered on April 6, 2005, would authorize not more than $15 million in assistance and other support "for individuals and independent nongovernmental organizations to support democracy-building efforts for Cuba" and up to $5 million for the OAS to support work on Cuba's human rights situation. (See *Cuba Broadcasting* and *U.S. Fugitives* sections for additional Cuba provisions.)

Modification of Sanctions

H.Con.Res. 206 (Serrano). Expresses the sense of Congress that the President should temporarily suspend restrictions on remittances, gift parcels, and family travel to Cuba to allow Cuban-Americans to assist their relatives in Cuba in the aftermath of Hurricane Dennis. Introduced July 12, 2005; referred to Committee on International Relations.

H.R. 208 (Serrano). Cuba Reconciliation Act. Lifts the trade embargo. Removes provisions restricting trade and other relations with Cuba, including repeal of the Cuban Democracy Act of 1992, the Cuban Liberty and Democratic Solidarity Act of 1996, and provisions of Section 211 of the Department of Commerce and Related Agencies Appropriations Act, 1999 related to transactions or payments with respect to trademarks. Introduced January 4, 2005; referred to the Committees on International Relations, Ways and Means, Energy and Commerce, Judiciary, Financial Services, Government Reform, and Agriculture.

H.R. 579 (Paul). Lifts the trade embargo. Removes provisions restricting trade and other relations with Cuba, including repeal of the Cuban Democracy Act of 1992, the Cuban Liberty and Solidarity Act of 1996, and provisions of Section 211 of the Department of Commerce and Relations Agencies Appropriations Act, 1999 related to transactions or payments with respect to trademarks. Prohibits U.S. assistance to Cuba. Introduced February 2, 2005; referred to Committees on International Relations, Ways and Means, Energy and Commerce, Judiciary, Financial Services, Government Reform, and Agriculture.

H.R. 719 (Moran of Kansas)/S. 328 (Craig). Agricultural Export Facilitation Act of 2005. Identical bills to facilitate the sale of U.S. agricultural products to Cuba, as authorized by the Trade Sanctions and Export Enhancement Act of 2000.

The bills would provide for a general license by the Secretary of the Treasury for travel-related transactions related to the sales and marketing of agricultural products to Cuba; express the sense of Congress that the Secretary of State should issue visas for the temporary entry of Cuban nationals to conduct activities related to purchasing U.S. agricultural goods; clarify the "payment of cash in advance" term used in the Trade Sanctions Reform and Export Enhancement Act of 2000 (TSRA) to mean that the payment by the purchaser and the receipt of such payment to the seller occurs prior to the transfer of title of the commodity or product to the purchaser and the release of control of such commodity or product to the purchaser; would prohibit the President from restricting direct transfers from a Cuban financial institution to a U.S. financial institution for U.S. agricultural sales under TSRA; and repeals Section 211 of the Department of Commerce and Relations Agencies Appropriations Act, 1999 related to transactions or payments with respect to trademarks.

H.R. 719 was introduced February 9, 2005; referred to the Committees on International Relations, Judiciary, Financial Services, and Agriculture. S. 328 introduced February 9, 2005; referred to Committee on Foreign Relations. S.Amdt. 140 (Martinez), an amendment intended to be proposed to S. 328, would require a presidential certification to Congress that Cuba has released or properly accounted for political prisoners in Cuba, including a list of 79 individuals, before the provisions of the act take effect.

H.R. 1268 (Lewis). FY2005 Emergency Supplemental Appropriations for Defense, the Global War on Terror and Tsunami Relief. Introduced March 11, 2005. During April 20, 2005, Senate floor debate, S.Amdt. 475 (Craig), as modified by S.Amdt. 549 (Baucus) and S.Amdt. 552 (Baucus), would have clarified the terms of "payment of cash in advance" under the Trade Sanctions Reform and Export Enhancement Act of 2000. The amendment was ruled non-germane.

H.R. 1339 (Emerson)/S. 634 (Chambliss). Similar, although not identical, bills, to amend the Trade Sanctions Reform and Export Enhancement Act of 2000 to clarify allowable payment terms for sales of agricultural commodities and products to Cuba. The bills would clarify that "payment of cash in advance" means the payment by the purchaser and the receipt of such payment to the seller occurs prior to the transfer of title of such commodity or product to the purchaser and the release of control of such commodity or product to the purchaser. H.R. 1339 introduced March 16, 2005; referred to Committees on Financial Services, International Relations, and Agriculture. S. 634 was introduced March 16, 2005; referred to Committee on Foreign Relations.

H.R. 2361 (Taylor, Charles). FY2006 Interior, Environment, and Related Agencies Appropriations. House passed May 19, 2005. Senate passed June 29, 2005. During June 29, 2005, Senate consideration, the Senate rejected (60-35; a two-thirds majority vote was required) a motion to suspend the rules with respect to S.Amdt. 1059 (Dorgan), which would have allowed travel to Cuba under a general license for the purpose of visiting a member of the person's immediate family for humanitarian reasons. The amendment was then ruled out of order.

H.R. 2617 (Davis, Jim). Prohibits any additional restrictions on per diem allowances, family visits to Cuba, remittances, and accompanied baggage beyond those that were in effect on June 15, 2004. Introduced May 25, 2005; referred to the Committee on International Relations.

H.R. 2862 (Wolf). FY2006 Science, State, Justice, Commerce, and Related Agencies Appropriations Act. Reported by Appropriations Committee (H.Rept. 109-118). House passed June 16, 2005. During June 15, 2005, floor consideration, the House rejected H.Amdt. 270 (Flake), by a vote of 210-216, that would have prohibited use of funds to implement, administer, or enforce amendments to the Cuba embargo regulations from June 22, 2004, that tightened restrictions on gift parcels. H.Amdt. 269 (McDermott), which would have prohibited the use of funds in the bill to prosecute any individual for travel to Cuba, was offered but subsequently withdrawn on June 15, 2005. Senate approved (91-4) H.R. 2862 September 15, 2005. Also see provision on *Cuba Broadcasting* below.

H.R. 3058 (Knollenberg). FY2006 Transportation, Treasury, Housing and Urban Development, the Judiciary, District of Columbia, and Independent Agencies Appropriations. House Committee on Appropriations reported June 24, 2005 (H.Rept. 109-153). House approved (4-5-18) June 30, 2005. Senate Committee on Appropriations reported July 26, 2005 (S.Rept. 109-109). Senate approved (93-1) October 20, 2005. As approved by the House, Section 945 would prohibit funds from being used to implement February 25, 2005, amendments to Section 515.533 of Title 31, Code of Federal Regulations, regarding a clarification of the term "payment of cash in advance." The Senate-passed version contains an identical provision, Section 719, regarding the "payment of cash in advance" for U.S. agricultural exports to Cuba; the provision was adopted by an amendment offered by Senator Dorgan during July 19, 2005, consideration by the Senate Appropriations Subcommittee.

In the House, during June 30, 2005, floor consideration, the House rejected three Cuba amendments: on family travel, H.Amdt. 420 (Davis), by a vote of 208-211; on educational travel, H.Amdt. 422 (Lee), by a vote of 187-233; and on the overall embargo, H.Amdt. 424 (Rangel), by a vote of 169-250. An additional amendment on religious travel, H.Amdt. 421 (Flake), was withdrawn, and an amendment on travel by members of the U.S. military, H.Amdt. 419 (Flake), was ruled out of order for constituting legislation in an appropriations bill.

During Senate consideration, S.Amdt. 2133 (Dorgan), proposed on October 19, 2005, would have prohibited funds from being used to enforce restrictions on travel. The amendment was withdrawn the following day after a second-degree amendment, S.Amdt. 2158 (Ensign), related to abortion (and unrelated to Cuba) was proposed.

H.R. 3064 (Lee). Prohibits the use of funds available to the Department of the Treasury to implement regulations from June 2004 that tightened restrictions on travel to Cuba for educational activities. Introduced June 24, 2005; referred to Committee on International Relations.

H.R. 3372 (Flake). United States Trademark Defense Act of 2005. Repeals Section 211 of the Department of Commerce and Relations Agencies Appropriations Act, 1999, related to transactions or payments with respect to trademarks. Requires the United States Trade Representative (USTR) to examine the polices and practices of Cuba with respect to protecting and enforcing intellectual property rights, and requires USTR to give these findings due consideration when identifying countries that deny adequate protection, or market access, for intellectual property rights. Introduced July 21, 2005; referred to Committee on the Judiciary and Committee on Ways and Means.

S. 600 (Lugar). Foreign Affairs Authorization Act, Fiscal Years 2006 and 2007. Introduced and reported by Senate Foreign Relations Committee March 10, 2005 (S.Rept. 109-35). During Senate floor consideration on April 6, 2005, the Senate considered S.Amdt. 281 (Baucus) and a second-degree amendment, S.Amdt. 282 (Craig) that would facilitate the sale of U.S. agricultural products to Cuba. The language of the amendments consists of the provisions of S. 328 (Craig), the Agricultural Export Facilitation Act of 2005 described above. (Also see amendments above on assistance for Cuba *Human Rights and Democracy Projects* (S. 319), and below on *Television Broadcasting* to Cuba (S.Amdt. 284).)

S. 691 (Domenici)/H.R. 1689 (Feeney). Modifies the prohibition (so-called Section 211) on recognition by U.S. courts of certain rights relating to certain marks, trade names, or commercial names. S. 691 introduced April 4, 2005; referred to Senate Committee on the Judiciary. HR. 1689 introduced April 19, 2005; referred to House Committee on the Judiciary.

S. 894 (Enzi)/H.R. 1814 (Flake). Similar, although not identical, bills to allow travel between the United States and Cuba. S. 894 introduced April 25, 2005; referred to the Committee on Foreign Relations. H.R. 1814 introduced April 26, 2005; referred to the Committee on International Relations.

S. 1604 (Craig). Judicial Powers Restoration Act of 2005. Repeals Section 211 of the Department of Commerce and Related Agencies Appropriations Act, 1999, related to transactions or payments with respect to trademarks. Introduced July 29, 2005; referred to Senate Committee on the Judiciary.

Migration

H.R. 209 (Serrano). Baseball Diplomacy Act. Waives certain prohibitions with respect to nationals of Cuba coming to the United States to play organized baseball. Introduced January 4, 2005; referred to Committees on International Relations and Judiciary.

Cuba Broadcasting

H.R. 2862 (Wolf). FY2006 Science, State, Justice, Commerce, and Related Agencies Appropriations Act. Reported by House Appropriations Committee (H.Rept. 109-118) June 10, 2005. House passed (418-7) June 16, 2005. Reported by the Senate Appropriations Committee June 23, 2005 (S.Rept. 109-88). Senate approved (91-4) September 15, 2005. The report to the House bill includes a committee recommendation of $27.9 million for Cuba broadcasting, $10 million below the Administration's request, and does not provide funding for an aircraft to transmit Radio and TV Marti programming. Also see above for failed amendments on Cuba Sanctions. Senate appropriations for Cuba broadcasting are included in the Senate version of H.R. 3057 rather than H.R. 2862.

H.R. 3057 (Kolbe). FY2006 Foreign Operations, Export Financing, and Related Programs. Reported by House Committee on Appropriations June 24, 2005 (H.Rept. 109-152). House approved (393-32) June 29, 2005. Reported by Senate Committee on Appropriations June 30, 2005 (S.Rept. 109-96). Senate approved (98-1), amended, July 20, 2005. The Senate-approved version provides $37.7 million for Cuba broadcasting, including assistance for the procurement of an aircraft to transmit Radio and TV Marti programming. During July 19, 2005 floor consideration, the Senate defeated (33-66) S.Amdt. 1294 (Dorgan) that would have provided no funding for television broadcasting to Cuba, increased Peace Corps funding by $21.1 million, and reduced the amount provided for the Broadcasting Board of Governors by $21.1 million (the amount requested for TV Marti, including for the procurement of an aircraft). (See H.R. 2862 for House appropriations for Cuba broadcasting; also see *Human Rights and Democracy* and *Anti-Drug Cooperation* for additional Cuba provisions in H.R. 3057)

S. 600 (Lugar)/H.R. 2601 (Smith). Foreign Affairs Authorization Act, Fiscal Years 2006 and 2007. S. 600 introduced and reported by Senate Foreign Relations Committee March 10, 2005 (S.Rept. 109-35). H.R. 2601 introduced May 24, 2005; reported by Committee on International Relations July 13, 2005 (H.Rept. 109-168). House approved (351-78) July 20, 2005. Section 503 of each bill would authorize the Office of Cuba Broadcasting to use additional AM frequencies as well as FM and shortwave frequencies for Radio Marti in order to help improve signal delivery to Cuba. H.R. 2601 (Section 106) would authorize the Administration's full request of $37.7 million for Cuba broadcasting for FY2006 and $29.9 million for FY2007, including funds for an aircraft to improve radio and television transmission and reception. S. 600 (Section 111) would authorize funding for Cuba broadcasting under the International Broadcasting Operations account, but without a specific earmark. During Senate floor consideration on April 6, 2005, the Senate tabled S.Amdt. 284 (Dorgan), by a vote of 65-35, that would have prohibited funds from being used for television broadcasting to Cuba. Also see amendments above on assistance for Cuba *Human Rights and Democracy Projects* (S. 319) and on Cuba *Sanctions* (S.Amdt. 281).

Anti-Drug Cooperation

H.R. 3057 (Kolbe). FY2006 Foreign Operations, Export Financing, and Related Programs. Reported by House Committee on Appropriations June 24, 2005 (H.Rept. 109-152). House approved (393-32) June 29, 2005. Reported by Senate Committee on Appropriations June 30, 2005 (S.Rept. 109-96). Senate approved (98-1), amended, July 20, 2005. As approved by the House, Section 572 provides that no International Narcotics Control and Law Enforcement (INCLE) funds may be made available for Cuba. As approved by the Senate, Section 6089 would provide $5 million in INCLE funds for preliminary work to establish cooperation with appropriate agencies of the Cuban government on counter-narcotics matters. (See *Human Rights and Democracy* and *Cuba Broadcasting* for additional Cuba provisions in H.R. 3057.)

U.S. Fugitives

S. 600 (Lugar)/H.R. 2601 (Smith). Foreign Affairs Authorization Act, Fiscal Years 2006 and 2007. S. 600 introduced and reported by Senate Foreign Relations Committee March 10, 2005 (S.Rept. 109-35). H.R. 2601 introduced May 24, 2005; reported by Committee on International Relations July 13, 2005 (H.Rept. 109-168). House approved (351-78) July 20, 2005. As approved by the House, H.R. 2601 includes a provision, Section 101(1)(H), that authorizes funds for the U.S. Interests Section in Havana to disseminate the names of fugitives, such as Joanne Chesimard and William Morales, who are residing in Cuba, and any rewards for their capture. Also see amendments above on assistance for Cuba *Human Rights and Democracy Projects* (S. 319) and on Cuba *Sanctions* (S.Amdt. 281). The provision was added by H.Amdt. 484 (Fosella), approved by voice vote, during July 20, 2005 floor consideration. S. 600 does not have a similar provision.

H.R. 332 (King). Amends the Cuban Liberty and Democratic Solidarity Act of 1996 to require that, in order to determine that a democratically elected government in Cuba exists, the government extradite to the United States convicted felon William Morales and all other individuals who are living in Cuba in order to escape prosecution or confinement for criminal offense committed in the United States. Introduced January 25, 2005; referred to the Committee on International Relations.

For Additional Reading

CRS Report RL32905, *Transportation, the Treasury, Housing and Urban Development, the Judiciary, the District of Columbia, the Executive Office of the President and Independent Agencies: FY2006 Appropriations,* coordinated by David Randall Peterman and John Frittelli.

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 RS22228, *Cuba after Fidel Castro: Issues for U.S. Policy,* by Mark P Sullivan.

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 108th Congress*, by Mark P. Sullivan.

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

CRS Report RL30628, *Cuba: Issues and Legislation in the 106th 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 Report RS22173, *Detainees at Guantanamo Bay*, by Jennifer Elsea.

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

CRS Report RS22094, *Lawsuits Against State Supporters of Terrorism: An Overview*, by Jennifer K. Elsea.

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.

CRS Report RL32014, *WTO Dispute Settlement: Status of U.S. Compliance in Pending Cases*, by Jeanne J. Grimmett.