



# Cuba: Issues for the 111<sup>th</sup> Congress

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## Summary

Cuba remains a one-party communist state with a poor record on human rights. The country's political succession in 2006 from the long-ruling Fidel Castro to his brother Raúl was characterized by a remarkable degree of stability. The government of Raúl Castro implemented limited economic policy changes in 2008 and 2009, and in September 2010 began a significant series of reforms to reduce the public sector and increase private enterprise. Few observers expect the government to ease its tight control over the political system, although it has reduced the number of political prisoners significantly.

Since the early 1960s, U.S. policy has consisted largely of isolating Cuba through economic sanctions. A second policy component has consisted of support measures for the Cuban people, including U.S.-sponsored broadcasting and support for human rights activists. In light of Fidel Castro's departure as head of government, many observers called for a re-examination of U.S. policy. The Obama Administration lifted restrictions on family travel and remittances and restarted talks with the Cuban government. It criticized Cuba's repression of dissidents, but also welcomed the release of political prisoners. The Administration also repeatedly called for the release of a U.S. government subcontractor imprisoned since December 2009.

The 111<sup>th</sup> Congress approved three provisions in the FY2009 omnibus appropriations measure (P.L. 111-8) in March 2009 that eased sanctions on family travel, travel for the marketing of agricultural and medical goods, and payment terms for U.S. agricultural exports. In December 2009, Congress included a provision in the FY2010 omnibus appropriations legislation (P.L. 111-117) that eased payment terms for U.S. agricultural exports to Cuba during FY2010 by defining the term "payment of cash in advance" more broadly. While Congress did not complete action on any of the FY2011 appropriations measures, it did approve a series of short-term continuing resolutions (P.L. 111-242, as amended), the last of which (P.L. 111-322) provided funding for federal agencies through March 4, 2011 under conditions provided in enacted FY2010 appropriations measures. This extended the "payment of cash in advance provision" and also continued Cuba broadcasting and democracy funding. In other legislative action, in May 2009, the Senate approved S.Res. 149, related to freedom of the press, and in March 2010 it approved S.Con.Res. 54, recognizing the death of a Cuban hunger striker.

Numerous other initiatives were introduced, but not considered. Several of these would have eased Cuba sanctions: H.R. 188, H.R. 1530, and H.R. 2272 (overall sanctions); H.R. 874/S. 428 and H.R. 1528 (travel); H.R. 332 (educational travel); H.R. 1531/S. 1089 and H.R. 4645/S. 3112 (agricultural exports and travel); H.R. 1737 (agricultural exports); and S. 774, H.R. 1918, and S. 1517 (hydrocarbon resources). H.R. 1103/S. 1234 would have modified a trademark sanction, while several bills cited above would have repealed the sanction. S. 1808 would have eliminated Radio and TV Martí. Measures that would have increased sanctions were: H.R. 2005 (related to fugitives), H.R. 2687 (Organization of American States participation), and H.R. 5620 (Cuba's oil development). H.Con.Res. 132 would have called for the fulfillment of certain democratic conditions before the United States increased trade and tourism to Cuba.

This report reflects legislative developments through the 111<sup>th</sup> Congress and will not be updated. Also see CRS Report RL31139, *Cuba: U.S. Restrictions on Travel and Remittances*, and CRS Report R41522, *Cuba's Offshore Oil Development: Background and U.S. Policy Considerations*.

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## Recent Developments

On December 23, 2010, the Roman Catholic Archdiocese of Havana announced that two more political prisoners would be released. This brought to 57 the number of political prisoners released since July, with 56 agreeing to be sent to Spain and 1 released on humanitarian parole to remain in Cuba. It also includes 41 of 52 prisoners arrested in 2003 that the government had agreed in July 2010 to release. Cardinal Jaime Ortega maintains that the remaining 11 political prisoners on the list from July (some who want to remain in Cuba and some who want to travel to the United States) would be released in coming months. Overall, human rights groups estimate that there are around 100 remaining political prisoners in Cuba. (See “Political Prisoners” below.)

On December 3, 2010, the State Department issued a statement on the one-year anniversary of the detention of USAID subcontractor Alan Gross in Cuba, calling for his release and maintaining that “the continued detention of Alan Gross is a major impediment to advancing the dialogue between our two countries.”

On November 8, 2010, President Castro announced that the Cuban Communist Party’s sixth congress would be held in April 2011, and would concentrate on updating the Cuban economic model, and outlining the economic and social policy of the party and the revolution. The last party congress was held in 1997.

In September 2010, the Cuban government announced a significant series of reforms designed to reduce the public sector and increase private enterprise. On September 13, 2010, the government announced that by the end of March 2011 it would identify half a million state workers that would be laid off, with most expected to find work in the expanding private sector. On September 24, the government announced an expansion of self-employment, identifying 178 categories of work allowed with 83 of those allowing small businesses to hire non-family members. (See “Economic Changes Under Raúl” below.)

On September 13, 2010, President Obama issued his annual determination with respect to foreign governments’ efforts regarding trafficking in persons. With regard to Cuba, which has been on the State Department’s list of countries (Tier 3) that do not cooperate in the fight against trafficking since 2003, the President provided a partial waiver to allow for educational and cultural exchange programs. (See the presidential memorandum available at: <http://www.whitehouse.gov/the-press-office/2010/09/13/presidential-memorandum-trafficking-persons>.)

On July 29, 2010, the Senate Committee on Appropriations reported S. 3677 (S.Rept. 111-238), the FY2011 Financial Services and General Government Appropriations Act, with a provision in section 621 that would continue to define during fiscal year 2011 “payment of cash in advance” under the Trade Sanctions Reform and Export Enhancement Act of 2000 as payment before the transfer of title to, and control of, the exported items to the Cuban purchaser. This would extend a similar provision for FY2010.

For entries from 2010 and 2009, see **Appendix A**.

Figure I. Map of Cuba



Source: CRS.

## Political Conditions

Raúl Castro officially became Cuba's president on February 24, 2008. On that day, Cuba's legislature selected him as president of the 31-member Council of State, a position that officially made him Cuba's head of government and state. Most observers expected this since he already had been heading the Cuban government on a provisional basis since July 2006 when his brother Fidel Castro, Cuba's long-ruling communist leader, stepped down as president because of poor health.<sup>1</sup>

For many years, Raúl, as first vice president of the Council of State and the Council of Ministers, had been the officially designated successor and was slated to become chief of state with Fidel's departure. Raúl also had served as Minister of the Revolutionary Armed Forces (FAR) since the beginning of the Cuban Revolution. When Fidel stepped down from power in late July 2006 because of poor health, he signed a proclamation that ceded political power to Raúl on a provisional basis, including the positions of first secretary of the Cuban Communist Party (PCC), commander in chief of the Revolutionary Armed Forces (FAR), and president of the Council of State. Despite the change in government in February 2008, Fidel still holds the official title of first secretary of the PCC.

While it was not a surprise to observers for Raúl to succeed his brother Fidel as head of government, the selection of José Ramón Machado Ventura as the Council of State's first vice president was a surprise. Born in 1930, Machado is a physician by training and is part of the older generation of so-called *históricos* of the 1959 Cuban revolution (Fidel Castro was born on August 13, 1926, while Raúl Castro was born on June 3, 1931). He has been described as a hard-line communist party ideologue, and reportedly has been a close friend and confidant of Raúl for many years.<sup>2</sup> Machado's position is significant because it makes him the official successor to Raúl, according to the Cuban Constitution. Many observers had expected that Carlos Lage, one of five other vice presidents on the Council of State, would have been chosen as first vice president. Born in 1951, Lage was responsible for Cuba's economic reforms in the 1990s, and represented a younger generation of Cuban leaders.

Several key military officers and confidants of Raúl also became members of the Council, increasing the role of the military in the government. General Julio Casas Regueiro, who already was on the Council, became one of its five vice presidents. Most significantly, Casas, who had been first vice minister in the FAR, was selected by Raúl as the country's new minister of the FAR, officially replacing Raúl in that position. Casas also is chairman of GAESA (Grupo de Administracion Empresarial, S.A.), the Cuban military's holding company for its extensive business operations. Two other military appointments to the Council were Gen. Alvaro López Miera, the army's chief of staff, and Gen. Leopoldo Cintra Frías, who commanded the Western army, one of Cuba's three military regions.<sup>3</sup>

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<sup>1</sup> For more on Cuba's political succession, see CRS Report RS22742, *Cuba's Political Succession: From Fidel to Raúl Castro*, by Mark P. Sullivan.

<sup>2</sup> Daniel Dombey, Richard Lapper, and Andrew Ward, "A Family Business, Cuban-Americans Look Beyond the Havana Handover," *Financial Times*, February 27, 2008.

<sup>3</sup> Pablo Bachelet, "New Cuban Leader Adds Military Loyalists to Team," *Miami Herald*, February 25, 2008.

## **Background to the Succession**

Until Fidel stepped down in 2006, he had ruled the island nation since the 1959 Cuban Revolution, which ousted the corrupt government of Fulgencio Batista. 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 PCC as the leading force in state and society, with power centered in a Political Bureau headed by Fidel Castro. In October 1997, the Cuban Communist Party held its 5<sup>th</sup> Congress (the prior one was held in 1991) in which the party reaffirmed its commitment to a single party state and reelected Fidel and Raúl Castro as the party's first and second secretaries.

Cuba's Constitution also outlines national, provincial, and local governmental structures. Legislative authority is vested in a National Assembly of People's Power that meets twice annually for brief periods. When the Assembly is not in session, a Council of State, elected by the Assembly, acts on its behalf. According to Cuba's Constitution, the president of the Council of State is the country's head of state and government. Executive power in Cuba is vested in a Council of Ministers, also headed by the country's head of state and government, that is, the president of the Council of State. From the promulgation of the 1976 Constitution until February 24, 2008, Fidel served as head of state and government through his position as president of the Council of State.

Although National Assembly members were directly elected for the first time in February 1993, only a single slate of candidates was offered. 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 contrast, municipal elections at the local level are competitive, with from two to eight candidates. To be elected, the candidate must receive more than half of the votes cast. As a result, runoff elections between the two top candidates are common.

National Assembly elections were held on January 20, 2008 (along with elections for 1,201 delegates to 14 provincial assemblies), and Fidel Castro was once again among the candidates elected to the now 614-member legislative body. As in the past, voters were only offered a single slate of candidates.

On February 24, 2008, the new Assembly was scheduled to select from among its ranks the members of the Council of State and its president. Many observers speculated that because of his poor health, Fidel would choose not to be re-elected as president of the Council of State, which would officially confirm his departure from heading the Cuban government. Statements from Castro himself in December 2007 hinted at his potential retirement. That proved true on February 19, 2008, when Fidel announced that he would not accept the position as president of the Council of State, essentially confirming his departure as titular head of the Cuban government.

Before Fidel stepped down from power in July 2006 for health reasons, observers discerned several potential scenarios for Cuba's future after Fidel. These fit into three broad categories: the continuation of a communist government; a military government; or some type of democratic government, whether it be a democratic transition or fully democratic government. According to most observers, the most likely scenario, at least in the short term, was the continuation of the regime under the leadership of Raúl. This was likely 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. The FAR has been in control of the government's security apparatus since 1989 and has played an increasing role in Cuba's economy through the ownership of numerous business

enterprises. The scenario of a military-led government was viewed by some observers as a possibility only if a successor communist government failed because of divisiveness among leaders or political instability. For many observers, the least likely scenario upon Fidel's death or departure was a democratic transition government. With a strong totalitarian security apparatus, the Castro government 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.<sup>4</sup>

## **March 2009 Government Shake-Up**

In early March 2009, President Raúl Castro orchestrated a government shake-up that combined four ministries into two and ousted a dozen high-ranking officials, most notably including Foreign Minister Felipe Pérez Roque, Council of Ministers Secretary Carlos Lage, and Minister of Economy and Planning José Luis Rodríguez García. The streamlining combined the portfolios of food and fishing into one ministry and the foreign investment and trade portfolios into another ministry. Changes in the bureaucracy had been anticipated since February 2008 when Raúl Castro vowed to make the government smaller and more efficient, but the ouster of both Felipe Pérez Roque and Carlos Lage, who lost all their government and party positions, caught many observers by surprise. Pérez Roque was replaced by career diplomat Bruno Rodríguez Parrilla, who served for eight years (1995-2003) as Cuba's U.N. Ambassador and most recently served as vice foreign minister. Carlos Lage, who most significantly lost his position as a vice president of the Council of State, was replaced by military General José Amado Guerra, who had worked for Raúl Castro as secretary of the FAR.

What was unexpected about the simultaneous ouster of both Pérez Roque and Lage was that they represented different tendencies within Cuba's communist political system. Pérez Roque, a former private secretary to Fidel, was known as a hardliner, while Carlos Lage, who was responsible for Cuba's limited economic reforms in the 1990s, was viewed as a potential economic reformer. Some observers maintain that the ouster of both Pérez Roque and Lage was a move by Raúl to replace so-called Fidelistas with his own supporters. Fidel, however, wrote in one of his reflections in the Cuban press that both officials had been seduced by ambitions for power, and that a majority of the other officials who were replaced by Raúl had not originally been appointed by Fidel.<sup>5</sup> Along these lines, a number of observers maintain that the ouster of Pérez Roque and Lage had more to do with removing potential contenders for power in a post-Castro Cuba.

What appears clear from the government shake-up is that Raúl Castro begun putting his mark on the Cuban government bureaucracy. Some observers contend that Raúl was moving forward with his pledge to make the government more efficient. According to this view, ideology did not play a role in the appointments, and several of those brought in as ministers were relatively unknown technocrats.<sup>6</sup> The new appointments also continued the trend toward bringing more military

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<sup>4</sup> For further discussion of potential Cuban political scenarios in the aftermath of Fidel Castro's stepping down from power in 2006 because of poor health, see CRS Report RL33622, *Cuba's Future Political Scenarios and U.S. Policy Approaches*, by Mark P. Sullivan.

<sup>5</sup> According to Fidel, "The sweetness of power for which they had made no sacrifice awoke in them ambitions that led them to an unworthy role. The external enemy was filled with illusion about them." See Reflections of Fidel, "Health Changes within the Council of Ministers," from *CubaDebate* as translated by *Granma International*, March 3, 2009.

<sup>6</sup> Frances Robles, "Cuban Government Undergoes Massive Restructuring," *Miami Herald*, March 3, 2009.

officials into the government. In addition to Gen. José Amado Guerra becoming Secretary of the Council of Ministers, another military official, General Salvador Pardo Cruz, became minister of the steelmaking industry. Three other military officials already head the ministries of the FAR, Interior, and Agriculture.

## Looking Ahead

Since Fidel stepped down from power in 2006, Cuba's political succession from Fidel to Raúl Castro has been characterized by a remarkable degree of stability. Although initially there were not any significant economic changes under Raúl, there were signs that changes could be coming. In a July 2007 speech, Raúl maintained that structural changes were needed in the Cuban economy in order to increase efficiency and production. In his first speech as president in February 2008, Raúl promised to make the government smaller and more efficient, to review the potential revaluation of the Cuban peso, and to eliminate excessive bans and regulations that curb productivity.<sup>7</sup> In March and April 2008, the government implemented a number of economic changes that from the outside might not seem significant, but were noteworthy policy changes for a government that has heretofore followed a centralized communist economic model. The government also began some reform efforts in the agriculture sector beginning in 2008 in an effort to boost food production, but the results have been disappointing. Until recently, there was dissatisfaction that more reforms were not forthcoming, but as discussed below, the government announced a significant series of reforms in September 2010 designed to reduce the public sector (by half a million over the next six months) and to increase private enterprise by authorizing more areas for self-employment. (See "Economic Changes Under Raúl" below.)

In the political sphere, however, few expect there will be any change to the government's tight control over the political system, which is backed up by a strong security apparatus. Some observers point to the significantly reduced number of political prisoners over the past several years as evidence of a lessening of repression, but while human rights activists welcome the release, some maintain that the overall situation has not improved, with the government resorting to short term detentions and other forms of intimidation.

Originally, the PCC's sixth congress was expected to be held at end of 2009 (the last was held in 1997), but the party postponed it, with Raúl Castro maintaining that additional and extensive preparation was needed for the meeting. Observers maintain that Cuba's poor economic situation prompted the postponement of the congress.

In early November 2010, however, Raúl Castro announced that the sixth party congress would be held in April 2011. The President maintained that the congress would concentrate on the economy, with decisions on updating the Cuban economic model, and outlining the economic and social policy of the party and the revolution. While some analysts had speculated that Fidel Castro would be officially replaced as head of the party during the congress, and that it was likely that some of the PCC's 25-member Political Bureau (Politburo) would also be replaced, Raúl Castro maintained that decisions regarding the party's leadership would be postponed until the end of the year when a party conference would be held.

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<sup>7</sup> "Cuba: Full Text of Raúl Castro's National Assembly Address," *Cubavisión*, Havana (as translated by Open Source Center) February 24, 2008.

## Human Rights

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

The Cuban government conducted a severe crackdown in March 2003 (often referred to as the *Primavera Negra*, or Black Spring) and imprisoned 75 democracy activists, including independent journalists and librarians and leaders of independent labor unions and opposition parties. In May 2010, however, Cuba's Catholic Cardinal Jaime Ortega met with President Castro in talks that led to the release of several political prisoners. After a subsequent meeting on July 7, 2010, along with visiting Spanish Foreign Minister Miguel Ángel Moratinos, the Church announced that authorities would free 52 political prisoners, with 5 to be released soon and 47 others over the next 3 to 4 months. By the end of 2010, human rights groups estimated that around 100 political prisoners remained. (See discussion of "Political Prisoners" below.)

## Background

The Inter-American Commission on Human Rights maintained in its 2008 annual human rights report that the Cuban government's "restrictions on political rights, freedom of expression, and dissemination of ideas have created, over a period of decades, a situation of permanent and systematic violations of the fundamental rights of Cuban citizens, which is made notably worse by the lack of independence of the judiciary."<sup>8</sup>

Cuba signed two U.N. human rights treaties in 2008: the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social, and Cultural Rights. Some considered this a positive step, but others maintain that the Cuban government has not taken any significant action to guarantee civil and political freedoms. In March 2008, the Cuban government did lift the ban on Cubans staying at tourist hotels. Although few Cubans will be able to afford the cost of staying in such hotels, the move was symbolically significant and ended the practices of what critics had dubbed "tourism apartheid."

On December 17, 2008, Cuban President Raúl Castro offered to exchange some imprisoned Cuban political dissidents for five Cubans imprisoned in the United States since 2001 for espionage. The so-called "Cuban five" are serving sentences ranging from 15 years to life. (For additional background, see "Cuban Spies in the United States" below.) In response, the State Department rejected the offer, insisting that the jailed dissidents in Cuba should be released immediately without any conditions.<sup>9</sup>

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<sup>8</sup> Organization of American States, Inter-American Commission on Human Rights, "Annual Report of the IACHR 2008," February 25, 2009, "Chapter IV, Cuba" available at <http://www.cidh.oas.org/annualrep/2008eng/Chap4.c.eng.htm>.

<sup>9</sup> Marco Sibaja, "Raul Castro Offers To Free Dissidents in Exchange for Alleged Cuban Spies Jailed in U.S.," *Associated Press Newswires*, December 18, 2008.

Human Rights Watch issued a report in November 2009 criticizing Cuba's human rights record under the government of Raúl Castro. According to the report, Raúl has kept Cuba's repressive machinery in place, with scores of political prisoners languishing in jail and the use of "draconian laws and sham trials to incarcerate scores more who have dared to exercise their fundamental freedoms." In particular, the report notes that the Cuban government has relied on a "dangerousness" provision of the Cuban criminal code that allows the state to imprison individuals before they have committed a crime.<sup>10</sup>

According to the State Department's human rights report for 2009, issued in March 2010, the Cuban government continued to commit numerous serious abuses during the year. Among the human rights problems cited in the State Department report were "beatings and abuse of prisoners and detainees, harsh and life-threatening prison conditions, including denial of medical care; harassment, beatings, and threats against political opponents by government-recruited mobs, police, and state security officials acting with impunity; arbitrary arrest and detention of human rights advocates and members of independent professional organizations; and denial of fair trial, including for at least 194 political prisoners and as many 5,000 persons who have been convicted of potential 'dangerousness' without being charged with any specific crime." As noted in the report, Cuban authorities engaged in pervasive monitoring of private communications and severely limited freedoms of speech and press, peaceful assembly, and association and freedom of movement. (See the full State Department human rights report on Cuba, available at <http://www.state.gov/g/drl/rls/hrrpt/2009/wha/136108.htm>.)

Amnesty International published a report in late June 2010, *Restrictions on Freedom of Expression in Cuba*, which concluded that the Cuban government "continues to resort to repressive tactics and criminal proceeding to restrict and punish the free expression of opinions." According to the report, Cuba's laws severely restrict the legitimate exercise of free expression in violation of international human rights standards while the judiciary, which lacks impartiality and independence, is complicit in the repression of human rights and fundamental freedoms. The report called on Cuba to make changes to its laws and practices restricting freedom of expression, end the harassment of dissidents, ratify the U.N. human rights treaties that it signed in 2008, and allow U.N. and OAS human rights officials access to visit Cuba with unfettered access to all individuals and groups of civil society.<sup>11</sup>

While Cuban authorities have continued to stifle dissent and repress freedoms, pro-democracy and human rights activists continue to call attention to Cuba's poor human rights record and many have been recognized over the years by the international community for their efforts.

A human rights group known as the Ladies in White (*Damas de Blanco*) was formed in April 2003 by the wives, mothers, daughters, sisters, and aunts of the members of the "group of 75" dissidents arrested a month earlier in Cuba's human rights crackdown.<sup>12</sup> The group conducts peaceful protests calling for the unconditional release of political prisoners. Dressed in white, its members attend Mass each Sunday at St. Rita's Church in Havana and then walk silently through the streets to a nearby park. In April 2008, 10 members of the Ladies in White were physically

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<sup>10</sup> "New Castro, Same Cuba: Political Prisoners in the Post-Fidel Era," Human Rights Watch, November 2009, available at <http://www.hrw.org/en/reports/2009/11/18/new-castro-same-cuba>.

<sup>11</sup> Amnesty International, *Restrictions on Freedom of Expression in Cuba*, June 2010, available at: <http://www.amnesty.org/en/library/info/AMR25/005/2010/en>.

<sup>12</sup> The website of the Damas de Blanco is available at <http://www.damasdeblanco.com/>.

removed from a park near the Plaza of the Revolution in Havana when they demanded the release of their husbands and the other members of the “group of 75” still imprisoned. The group held protests during the third week of March 2010 to commemorate the March 2003 crackdown. Cuban security forces and government-orchestrated mobs forcefully broke up the protests on March 16 and 17, while protests on other days were subject to verbal abuse by mobs. In April, the Ladies in White were prevented from conducting their weekly protests by government-orchestrated mobs. Through the intercession of Roman Catholic Cardinal Jaime Ortega, the Cuban government ended the harassment in early May 2010 and allowed the Ladies in White to continue with their weekly marches.

Cuban Internet blogger Yoaní Sánchez has received considerable international attention since late 2007 for her website, *Generación Y*, which includes commentary critical of the Cuban government. In May 2008, Sánchez was awarded Spain’s Ortega y Gasset award for digital journalism, but the Cuban government did not provide her with an exit permit to accept the award. (Sánchez’s website is available at <http://www.desdecuba.com/generaciony/>). On November 6, 2009, Sánchez and two other bloggers, Orlando Luis Pardo and Claudia Cadelo, were intercepted by state security agents while walking on a Havana street on their way to participate in a march against violence. Sánchez and Pardo were beaten in the assault. The Department of State issued a statement deploring the assault, and expressed its deep concern to the Cuban government for the incident.

## **Death of Hunger Striker Orlando Zapata Tamayo**

The death of imprisoned Cuban dissident Orlando Zapata Tamayo on February 23, 2010, after an 83-day hunger strike focused increased U.S. and world attention on the plight of Cuba’s political prisoners. Zapata, who was 42 years old at the time of his death, was arrested on March 20, 2003, while taking part in a hunger strike to demand the release of political prisoner Oscar Biscet. He was a member of the Alternative Republican Movement and the National Civic Resistance Committee. Zapata was not counted among the “group of 75” political prisoners arrested in 2003, but in January 2004, Amnesty International declared that he was a prisoner of conscience. In May 2004, Zapata was sentenced to three years in prison for “disrespect, public disorder, and resistance,” but he was subsequently tried on further charges and was serving a total sentence of 36 years.<sup>13</sup>

U.S. officials maintained that Zapata’s death highlighted the injustice of Cuba’s holding of more than 200 political prisoners and called for their immediate release.<sup>14</sup> President Obama issued a statement on March 24, 2010, expressing deep concern about the human rights situation in Cuba, including the death of Zapata, the repression of the Ladies in White, and increased harassment of those who dare to express the desires of their fellow Cuban citizens. The President called for the end of repression, the immediate and unconditional release of all political prisoners, and respect for the basic rights of the Cuban people. On March 18, 2010, the Senate approved S.Con.Res. 54 (Nelson, Bill), which recognized Zapata’s life and called for a continued focus on the promotion of internationally recognized human rights in Cuba. Similar resolutions have been introduced in the House: H.Con.Res. 251 (McGovern) and H.Con.Res. 252 (Ros-Lehtinen).

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<sup>13</sup> Amnesty International, “Death of Cuban Prisoner of Conscience on Hunger Strike Must Herald Change,” February 24, 2010, and “Cuba: Newly Declared Prisoners of Conscience,” January 29, 2004.

<sup>14</sup> U.S. Department of State, Philip J. Crowley, Assistant Secretary, Bureau of Public Affairs, “Death of Cuban Dissident Orlando Zapata Tamayo,” February 24, 2010.

Zapata's death also prompted considerable criticism from human rights organizations and other countries. Amnesty International expressed strong criticism of the death of Zapata, which it maintained was an "indictment of the continuing repression of political dissidents in Cuba." It called for Cuba to invite international human rights experts to visit Cuba to verify respect for human rights.<sup>15</sup> The European Parliament condemned the death of Zapata and called for the "immediate and unconditional release of political prisoners," and even Spain, which had been lobbying the European Union for a relaxation of its common policy on Cuba, urged the release of Cuban political prisoners. Chile and Costa Rica also criticized Cuba for Zapata's death, and Mexico expressed concern for the health of Cuban dissidents. President Raúl Castro said that he regretted Zapata's death, but also maintained that no one has been tortured or murdered in Cuba.<sup>16</sup>

Zapata's death prompted protests by other dissidents and several dissidents vowed to undertake hunger strikes. Cuban dissident Guillermo Fariñas began a hunger strike on February 24, 2010, calling for the release of 26 political prisoners who were reported to be in ill health. Fariñas had undertaken numerous other hunger strikes over the years, but he developed complications and a blood clot that drove him near death before he ended the strike on July 8, 2010, after Cuba announced that it would release 52 political prisoners (see discussion below).

## **Political Prisoners**

The independent Havana-based Cuban Commission on Human Rights and National Reconciliation (CCDHRN) documented in its July 5, 2010, report that Cuba held at least 167 political prisoners, down significantly from the 201 prisoners documented in January 2010. The figures reflect a continuing decline from previous years when the commission estimated at least 205 prisoners at the beginning of 2009, 283 prisoners at the beginning of 2007, and 333 at the beginning of 2006. Despite the reduction in the number of prisoners, human rights activists maintain that the overall situation has not improved. As noted in the commission's most recent report, the government has adopted lower-profile tactics of political repression against human rights activists over the past several years, including arbitrary short-term detentions and other forms of harassment or intimidation. The commission estimated that there were thousands of people imprisoned under the charge of "social dangerousness," which allows detention of those who authorities think will commit a crime.<sup>17</sup> As noted above, the State Department estimates that there are 5,000 Cubans imprisoned under this charge.

Since May 2010, Cuba's Catholic Church has played a key role that has led to the release of political prisoners. On May 19, 2010, Cardinal Jaime Ortega, Archbishop of Havana, and Archbishop Dionisio Garcia from Santiago met with President Castro, the first such meeting to take place since Raúl officially took over the presidency from his brother. The Church leaders described the meeting as positive, and said that discussion included the status of imprisoned dissidents. Reports soon surfaced that the government was going to move sick political prisoners to facilities near their home provinces. By the end of June, the government had released seven

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<sup>15</sup> Amnesty International, "Death of Cuban Prisoner of Conscience on Hunger Strike Must Herald Change," February 24, 2010.

<sup>16</sup> "Cuba: Raúl Castro 'Regrets' Political Prisoner Death, Blames United States," *CubaDebate*, Havana (Open Source Center) February 24, 2010; Tracy Wilkinson, "Castro 'Lamenting Dissident's Death,'" *Los Angeles Times*, February 25, 2010; Juan O. Tamayo, "Raúl Castro: Hunger Striker's Death 'Lamentable,'" *Miami Herald*, February 25, 2010.

<sup>17</sup> Comisión Cubana de Derechos Humanos y Reconciliación Nacional, "Informe Semestral (Enero-Junio de 2010), La Habana," July 5, 2010.

political prisoners and also begun transferring a number of other political prisoners closer to their homes.

On July 7, 2010, Cardinal Ortega met again with President Castro along with visiting Spanish Foreign Minister Miguel Ángel Moratinos and Cuban Foreign Minister Bruno Rodríguez. After the meeting, Cuba's Catholic Church announced that Cuban authorities would free 52 political prisoners, with 5 to be released soon and 47 others over the next 3 to 4 months. The prisoners are those remaining of the "group of 75" imprisoned during Cuba's so-called Black Spring of March 2003. Notably, a press release from the Archdiocese of Havana announcing the release was printed in the Cuban daily *Granma*.<sup>18</sup> Since October 2010, the Catholic Church has announced that additional prisoners were being released beyond the 52 who the government had agreed in July to release within 3 to 4 months.

By late December 2010, Cuba had released 57 political prisoners, with 56 agreeing to go to exile in Spain and 1 released on humanitarian parole to remain in Cuba.<sup>19</sup> This included 41 of the 52 prisoners that the government agreed in July to release. According to Cardinal Ortega, some of the remaining 11 political prisoners want to stay in Cuba and some want to travel to the United States. In early January 2011, Cardinal Ortega maintained that he expected the remaining 11 would be released in the coming months.<sup>20</sup> Human rights groups estimate that there are around 100 remaining political prisoners in the country.

While human rights organizations viewed positively the news that 52 political prisoners would be released, some qualified their statements. Amnesty International called for the dissidents' immediate release instead of waiting three to four months. Human Rights Watch called for the release of all remaining political prisoners as well as the dismantling of Cuba's authoritarian laws and practices.<sup>21</sup>

Upon hearing of the Church's initial announcement of the prisoner release in July 2010, Secretary of State Clinton said that it was "a positive sign" and that the United States welcomed it.<sup>22</sup> The State Department subsequently issued a statement welcoming the announcement by Cardinal Ortega that the prisoners would be released, and lauding the efforts of the Cuban Catholic Church, Spain, and others who have worked toward the release of Cuba's prisoners of conscience. The State Department maintained that "this is a positive development that we hope will represent a step towards increased respect for human rights and fundamental freedoms in Cuba," while also calling for the immediate and unconditional release of all political prisoners. The State Department also stated that "all those released from prison should be free to decide for themselves whether to remain in Cuba or travel to another country."<sup>23</sup>

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<sup>18</sup> "Prensa Latina Informó, Arzobispado de La Habana, Nota de Prensa," *Granma*, July 8, 2010.

<sup>19</sup> Arzobispado de La Habana, Nota de Prensa, December 23, 2010. This and previous press releases of the Archdiocese of Havana regarding the release of political prisoners are available at: <http://www.palabranueva.net/>.

<sup>20</sup> "Cardinal Expects More Dissidents To Be Released in Cuba," *EFE News Service*, January 2, 2011.

<sup>21</sup> Amnesty International, "Cuba Urged to Immediately Release All Prisoners of Conscience," July 8, 2010; and Human Rights Watch, "Cuba: Release of Dissidents Still Leaves Scores in Prison," July 8, 2010.

<sup>22</sup> "Secretary of State Clinton Holds Media Availability with Jordan Foreign Minister Nasser Judeh," *CQ Newsmaker Transcripts*, July 8, 2010.

<sup>23</sup> U.S. Department of State, "Release of Cuban Political Prisoners," Press Release, July 13, 2010.

## Economic Conditions

After the collapse of the former Soviet Union, Russian financial assistance to Cuba practically ended, and as a result, Cuba experienced severe economic deterioration from 1989-1993, with estimates of economic decline ranging from 35%-50%. Since then, however, there has been considerable improvement. From 1994-2000, as Cuba moved forward with some limited market-oriented economic reforms, economic growth averaged 3.7% annually.

Economic growth was strong in the 2005-2007 period, registering an impressive 11.2% in 2005 (despite widespread damage caused by Hurricanes Dennis and Wilma), 12.1% in 2006, and 7.3% in 2007.<sup>24</sup> The economy benefitted from the growth of the tourism, nickel, and oil sectors, and support from Venezuela and China in terms of investment commitments and credit lines. Cuba also benefits from a preferential oil agreement with Venezuela, which provides Cuba with more than 90,000 barrels of oil a day. The market value of Venezuela's oil to Cuba reportedly amounted to over \$2 billion annually in 2006 and 2007, and over \$3 billion in 2008.<sup>25</sup> Venezuela also helped Cuba upgrade an oil refinery in Cienfuegos, which was inaugurated in 2007.

In 2008, economic growth slowed to an estimated 4.1%. This was prompted by several problems, including the declining price of nickel, which accounts for a major share of Cuba's exports, the rising cost of food imports, and the devastation wrought by Hurricanes Gustav and Ike, particularly in the agricultural sectors.

The global financial crisis had a negative effect on the Cuban economy in 2009 because of lower world prices for nickel and a reduction in tourism from Canada and Europe. As a result, economic growth slowed to 1.4% in 2009 while the estimate for 2010 is for 1.5% growth.<sup>26</sup> In 2009, the government announced austerity measures that included energy rationing and cutbacks in transportation and some food programs.

Over the years, Cuba has expressed pride for the nation's accomplishments in health and education. According to the U.N. Development Program's 2010 *Human Development Report*, life expectancy in Cuba in 2010 was 79 years and adult literacy was estimated at almost 100%. Cuba has also boasted a 2009 infant mortality rate of 4.8 per 1,000 live births.<sup>27</sup>

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. Also in 1993, the government divided large state farms into smaller, more autonomous, agricultural cooperatives (Basic Units of Cooperative Production, UBPCs). It opened agricultural markets in 1994, where farmers could sell part of their produce on the open market, and it also permitted

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<sup>24</sup> "Cuba Country Report," *Economist Intelligence Unit*, December 2010.

<sup>25</sup> Jorge R. Piñon, "Cuba – 2008 Petroleum Supply Demand Analysis," Center for Hemispheric Policy, University of Miami, July 6, 2009.

<sup>26</sup> "Cuba Country Report," *Economist Intelligence Unit*, December 2010.

<sup>27</sup> "Infant Mortality, 5.3 in 2007!" *Granma Internacional*, January 4, 2008.

artisan markets for the sale of handicrafts. In 1995, the government allowed private food catering, including home restaurants (*paladares*), in effect legalizing activities that were already taking place, and approved a new foreign investment law that allows fully owned investments by foreigners in all sectors of the economy with the exception of defense, health, and education. In 1996, it authorized the establishment of free trade zones with tariff reductions typical of such zones. In 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.

After Cuba began to recover from its economic decline, the government began to backtrack on some of its reform efforts. Regulations and new taxes made it extremely difficult for many of the nation's self-employed. Some home restaurants were forced to close because of the new regulations. In 2004, the Cuban government limited the use of dollars by state companies for any services or products not considered part of their core business. Some analysts viewed the measure as an effort to turn back the clock on economic reform measures.<sup>28</sup> Also in 2004, Fidel Castro announced that U.S. dollars no longer would be used in entities that at the time accepted dollars (such as stores, restaurants, and hotels). Instead, dollars had to be exchanged for "convertible pesos," with a 10% surcharge for the exchange. Dollar bank accounts are still allowed, but Cubans are not able to deposit new dollars into the accounts. Beginning in April 2005, convertible pesos were no longer on par with the U.S. dollar, but instead were linked to a basket of foreign currencies. This reduces the value of dollar remittances sent to Cuba and provides more hard currency to the Cuban government.<sup>29</sup>

## **Economic Changes Under Raúl**

When Raúl Castro assumed provisional power in July 2006, there was some expectation that the government would be more open to economic policy changes, and a debate about potential economic reforms re-emerged in Cuba. On July 26, 2007, in a speech commemorating Cuba's revolutionary anniversary, Raúl Castro acknowledged that Cuban salaries were insufficient to satisfy needs, and maintained that structural changes were necessary in order to increase efficiency and production. In the aftermath of Raúl's July 2007 speech, Cuban public expectations for economic reform increased. Thousands of officially sanctioned meetings were held in workplaces and local PCC branches around the country where Cubans were encouraged to air their views and discuss the future direction of the country. Complaints focused on low salaries and housing and transportation problems, and some participants advocated legalization of more private businesses.<sup>30</sup> Raised expectations for economic change in Cuba increased the chance that the government actually would adopt some policy changes. Doing nothing would run the risk of increased public frustration and a potential for social unrest. Increased public frustration was evident in a clandestine video, widely circulated on the Internet in early February 2008, of a meeting between Ricardo Alarcón, the head of Cuba's legislature, and university students in which a student was questioning why Cuban wages are so low and why Cubans are prohibited from visiting tourist hotels (a policy subsequently changed in late March 2008) or traveling abroad. The video demonstrated the disillusionment of many Cuban youth with the poor economic situation and repressive environment in Cuba.

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<sup>28</sup> Larry Luxner, "New Decree Limits Dollar Transactions as Cuba Tightens Controls Once Again," *CubaNews*, April 2004.

<sup>29</sup> Larry Luxner, "Cuba's 'Convertible Peso' No Longer Linked to U.S. Dollar," *CubaNews*, April 2005, p. 3.

<sup>30</sup> Frances Robles, "Cubans Urged to Vent Views," *Miami Herald*, October 2, 2007.

After Raúl Castro officially assumed the presidency in 2008, his government announced a series of economic changes. In his first speech as president in February 2008, Raúl promised to make the government smaller and more efficient, to review the potential revaluation of the Cuban peso, and to eliminate excessive bans and regulations that curb productivity.<sup>31</sup> In mid-March, the government announced that restrictions on the sales of consumer products such as computers, microwaves, and DVD and video players would be lifted. In late March, it announced that it would lift restrictions on the use of cell phones. This officially occurred in mid-April. The government also announced in April 2008 that it would begin revamping the state's wage system by removing the limit that a state worker can earn. This was an effort to boost productivity and to deal with one of Cuba's major economic problems: how to raise wages to a level where basic human needs can be satisfied. The promised revamp of the wage system, however, has been delayed, reportedly by poor preparation and bureaucratic hurdles.

The problem of low wages in Cuba is closely related to another major economic problem: how to unify the two official currencies circulating in the country—the Cuban convertible peso (CUC) and the Cuban peso, which traded at about 24 to 1 CUC in 2008. Most people are paid in Cuban pesos, and the minimum monthly wage in Cuba is about 225 pesos (about \$9 U.S. dollars<sup>32</sup>), but for increasing amounts of consumer goods, convertible pesos are used. Cubans with access to foreign remittances or who work in jobs that give them access to convertible pesos are far better off than those Cubans who do not have such access.

A significant reform effort under Raúl Castro has focused on the agriculture sector, a vital issue because Cuba reportedly imports some two-thirds of its food needs.<sup>33</sup> In an effort to boost food production, the government began in 2008 to give farmers more discretion over how to use their land and what supplies to buy. Decision-making on agriculture reportedly has shifted from the national government to the local municipal level, with government bureaucracy cut significantly.<sup>34</sup> The government also began a program of turning idle land into productive use through a land grant program, whereby private farmers and cooperatives can apply for land. Despite these efforts, it has been reported in 2010 that overall food production is significantly below targets, and shortages of some basic agricultural products have been reported in Havana and elsewhere. Continued problems in the agricultural sector focus on an entrenched system whereby farmers depend on the state for fuel, pesticides, fertilizers and other resources in exchange for 70%-80% of what they produce. The government's inability to provide enough resources to farmers has hampered production, and its domination of the distribution process has hampered the delivery of products to market.<sup>35</sup>

At the beginning of 2010, there was a hint of forthcoming changes when Cuban Minister of Economy and Planning Marino Murillo reportedly said in January 2010 that “the gigantic paternalist state can no longer be, because there is no longer any way to maintain it.”<sup>36</sup> In April 2010, the Cuban government began a pilot project turning over some state-run barber shops and hair salons to their employees.

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<sup>31</sup> “Cuba: Full Text of Raúl Castro’s National Assembly Address,” *Cubavisión*, Havana (as translated by Open Source Center) February 24, 2008.

<sup>32</sup> U.S. Department of State, “Country Reports on Human Rights Practices 2007, Cuba,” March 11, 2008.

<sup>33</sup> Helen Popper, “Cuban Farm Reforms Sow Seeds of Enterprise,” *Reuters News*, December 17, 2009.

<sup>34</sup> Marc Frank, “Raúl Castro Overhauls Cuba’s Farm Bureaucracy,” *Reuters News*, May 1, 2008.

<sup>35</sup> Marc Frank, “Havana Food Production Plummet Despite Reforms,” *Reuters News*, March 3, 2010.

<sup>36</sup> Marc Frank, “Cuban Economy Minister Pushes for Less State Role,” *Reuters News*, March 8, 2010.

Since September 2010, the Cuban government has announced a series of significant reforms designed to reduce the public sector and increase private enterprise. On September 13, 2010, the government announced that by the end of March 2011 it would identify half a million state workers that would be laid off, with most expected to find work in the expanding private sector. The layoffs reportedly will affect all public sector employees, including in the public service and state-owned enterprises. Over the next five years, a total of 1.2 million state employees would be cut (out of about 4.3 million state workers).<sup>37</sup> On September 24, the government announced an expansion of self-employment, identifying 178 categories of work allowed with 83 of those allowing small businesses to hire non-family members.<sup>38</sup> The self-employment categories cover a wide range of employment from “carpenters, gardeners, artisans, and animal trainers to small businesses such as home-based bed and breakfasts, rental property, restaurants, pizzerias, and snack shops.”<sup>39</sup> New tax provisions would generate income for the government and include a new sales tax and social security tax.<sup>40</sup>

## Cuba’s Foreign Policy

During the cold war, Cuba had extensive relations with and support from the Soviet Union, with billions in annual subsidies to sustain the Cuban economy that helped fund an activist foreign policy and support for guerrilla movements and revolutionary governments abroad in Latin America and Africa. With the dissolution of the Soviet Union, an end to the cold war, and the loss of Soviet financial support, Cuba was forced to abandon its revolutionary exploits abroad. As its economy reeled from the loss of Soviet support, Cuba was forced to open up its economy and economic relations with countries worldwide, and developed significant economic linkages with Canada, Spain, other European countries, and China. In recent years, Venezuela—under populist President Hugo Chávez—has become a significant source of support for subsidized oil imports and investment. Relations with Russia have also intensified recently, with the visit of Russian President Dmitry Medvedev to Havana in November 2008, the visit of several Russian warships to Cuba in December 2008, and Raúl Castro’s visit to Moscow in late January 2009. Chinese President Hu Jintao also visited Cuba in November 2008, signing a dozen agreements.

With El Salvador’s restoration of relations with Cuba in June 2009, all Latin American nations now have official diplomatic relations with Cuba. Cuba has increasingly become more engaged in Latin America beyond the already close relations with Venezuela. Brazilian President Luiz Inácio Lula da Silva visited Cuba twice in 2008, and Cuba seems especially interested in expanding relations with Brazil. Cuba became a full member of the 23 member Rio Group of Latin American and Caribbean nations in November 2008; some observers see the group, which excludes the United States, as an alternative to the Organization of American States (OAS). Raúl Castro made his first foreign trip as president in December 2008, when he traveled to Venezuela, and then to Bahia, Brazil, where he attended the Latin American and Caribbean Integration and Development Summit, a regional initiative of President Lula.<sup>41</sup>

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<sup>37</sup> “Cuba Country Report,” *Economist Intelligence Unit*, October 2010.

<sup>38</sup> Juan O. Tamayo, “Cuba Unveils Plan to Overcome Its Economic Crisis,” *Miami Herald*, September 25, 2010.

<sup>39</sup> Marc Frank, “Raúl Castro’s Shock Therapy for Cuban Economy,” *ABC News*, November 8, 2010.

<sup>40</sup> *Ibid.*

<sup>41</sup> “Cuba: Bringing Cuba in from the cold,” *Latin American Regional Report, Caribbean & Central America*, December 2008.

Cuba is an active participant in international forums, including the United Nations and the controversial United Nations Human Rights Council. Cuba hosted the 14<sup>th</sup> summit of the Non-aligned Movement (NAM) in 2006, and held the Secretary Generalship of the NAM until its July 2009 summit in Egypt. Cuba is a member of the Bolivarian Alternative for the Americas, (ALBA), a Venezuelan-led integration and cooperation scheme founded as an alternative to U.S. efforts to negotiate a region-wide Free Trade Area of the Americas (FTAA).

Cuba was excluded from participation in the OAS in 1962 because of its identification with Marxism-Leninism, but in early June 2009, the OAS overturned the 1962 resolution in a move that could eventually lead to Cuba's reentry into the regional organization. While the Cuban government welcomed the OAS vote to overturn the 1962 resolution, it asserted that it would not return to the OAS. (For additional information on the OAS vote, see "Cuba and the Organization of American States.")

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

### **Policy Overview**

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, including an embargo on trade and financial transactions. The Cuban Assets Control Regulations (CACR), first issued by the Treasury Department in July 1963, lay out a comprehensive set of economic sanctions against Cuba, including a prohibition on most financial transactions with Cuba and a freeze of Cuban government assets in the United States. The CACR have been amended many times over the years to reflect changes in policy, and remain in force today.

These sanctions were made stronger with the Cuban Democracy Act (CDA) of 1992 (P.L. 102-484, Title XVII) and with the Cuban Liberty and Democratic Solidarity Act of 1996 (P.L. 104-114), the latter 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 sea-borne vessel to load or unload freight if it has been involved in trade with Cuba within the previous 180 days. The Cuban Liberty and Democratic Solidarity Act, 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. Most significantly, the law codified the Cuban embargo, including all

restrictions under the CACR. This provision is especially noteworthy because of its long-lasting effect on U.S. policy options toward Cuba. The executive branch is circumscribed in lifting or substantially loosening the economic embargo without congressional concurrence until certain democratic conditions are met, although the CACR includes licensing authority that provides the executive branch with some administrative flexibility (e.g., travel-related restrictions in the CACR have been eased and tightened on numerous occasions). Another significant sanction in the law 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.

In addition to sanctions, another component of U.S. policy, a so-called second track, consists of support measures for the Cuban people. This includes U.S. private humanitarian donations, medical exports to Cuba under the terms of the Cuban Democracy Act of 1992, U.S. government support for democracy-building efforts, and U.S.-sponsored radio and television broadcasting to Cuba. In addition, the 106<sup>th</sup> Congress approved the Trade Sanctions Reform and Export Enhancement Act of 2000 (P.L. 106-387, Title IX) that allows for agricultural exports to Cuba, albeit with restrictions on financing such exports. This led to the United States becoming Cuba's largest supplier of food and agricultural products since 2002.

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

Over the years, although U.S. policymakers have agreed on the overall objectives 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 those objectives. Some have advocated a policy of keeping maximum pressure on the Cuban government until reforms are enacted, while continuing 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. Legislative initiatives introduced over the past decade have reflected these three policy approaches.

Dating back to 2000, there have been significant efforts in Congress to ease U.S. sanctions, with one or both houses at times approving amendments to appropriations measures that would have eased U.S. sanctions on Cuba. Until March 2009, these provisions were stripped out of final enacted measures, in part because of presidential veto threats.

In light of Fidel Castro's departure as head of government, many observers have called for a re-examination of U.S. policy toward Cuba. In this new context, there are two broad policy approaches to contend with political change in Cuba: a status-quo approach that would maintain the U.S. dual-track policy of isolating the Cuban government while providing support to the Cuban people; and an approach aimed at influencing the attitudes of the Cuban government and Cuban society through increased contact and engagement.

In general, those who advocate easing U.S. sanctions on Cuba make several policy arguments. They assert that if the United States moderated its policy toward Cuba—through increased travel, trade, and diplomatic dialogue—then the seeds of reform would be planted, 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 the demise of Cuba's communist government does not appear imminent, even without Fidel Castro at the helm, the United States should espouse a more pragmatic 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 for U.S. businesses because of the unilateral nature 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 Vietnam, 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 the steps that Cuba needs to take in order for the United States to normalize relations. They argue that softening U.S. policy at this time without concrete Cuban reforms would boost the Castro government, 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, and that sustained sanctions can work. Opponents of loosening U.S. sanctions further argue that Cuba's failed economic policies, not the U.S. embargo, are the causes of Cuba's difficult living conditions.

## **Clinton Administration's Easing of Sanctions**

The Clinton Administration made several changes to U.S. policy in the aftermath of Pope John Paul II's 1998 visit to Cuba, which were intended to bolster U.S. support for the Cuban people. These included the resumption of direct flights to Cuba (which had been curtailed after the February 1996 shutdown of two U.S. civilian planes), the resumption of cash remittances by U.S. nationals and residents for the support of close relatives in Cuba (which had been curtailed in August 1994 in response to the migration crisis with Cuba), and the streamlining of procedures for the commercial sale of medicines and medical supplies and equipment to Cuba.

In January 1999, President Clinton announced several additional measures to support the Cuban people. These included a broadening of cash remittances to Cuba, so that all U.S. residents (not just those with close relatives in Cuba) could send remittances to Cuba; an expansion of direct passenger charter flights to Cuba from additional U.S. cities other than Miami (direct flights later in the year began from Los Angeles and New York); and an expansion of people-to-people contact by loosening restrictions on travel to Cuba for certain categories of travelers, such as professional researchers and those involved in a wide range of educational, religious, and sports activities.

## **Bush Administration Policy**

The Bush Administration essentially 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 emphasized stronger enforcement of economic sanctions and further tightened 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, and to the Administration's February 2005 tightening of restrictions on payment terms for U.S. agricultural exports to Cuba.

Nevertheless, the Bush Administration did not completely eliminate the easing of sanctions that occurred under the Clinton Administration. For example, Americans could still travel to Cuba to participate in educational activities, but these needed to be part of a structured academic program.

### **Commission for Assistance to a Free Cuba**

In October 2003, President Bush called for the establishment of an interagency Commission for Assistance to a Free Cuba, a Cabinet-level commission chaired by then-Secretary of State Colin Powell. The Commission, which had its first meeting in December 2003, was tasked with the objectives of (1) identifying additional means to help the Cuban people bring about an expeditious end to Cuba's dictatorship and (2) considering the requirements for U.S. assistance to a post-dictatorship Cuba.<sup>42</sup>

In May 2004, President Bush endorsed the recommendations of the Commission's first report, which 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/>.) In February 2005, the Administration 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 cash sales, a move opposed by many U.S. agricultural exporters ( For more, see "Agricultural Exports and Sanctions" below.)

In July 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." Secretary Rice reconvened the Commission for Assistance to a Free Cuba in December 2005 to identify additional measures to help Cubans hasten the transition to democracy and to develop a plan to help the Cuban people move toward free and fair elections.

In July 2006, the commission issued its second report, making recommendations to hasten political change in Cuba toward a democratic transition. (The full report is available at <http://www.cafc.gov/rpt/>.)

In the report, the commission called for the United States to provide \$80 million over two years for the following: to support Cuban civil society (\$31 million); to fund education programs and exchanges, including university training in Cuba provided by third countries and scholarships for economically disadvantaged students from Cuba at U.S. and third country universities (\$10 million); to fund additional efforts to break the Cuban government's information blockade and expand access to independent information, including through the Internet (\$24 million); and to support international efforts at strengthening civil society and transition planning (\$15 million). According to the Cuba Transition Coordinator, this assistance would be additional funding

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<sup>42</sup> U.S. Department of State, "Commission for Assistance to a Free Cuba," White House Fact Sheet, December 8, 2003.

beyond what the Administration is already currently budgeting for these programs.<sup>43</sup> Thereafter, the commission recommended funding of not less than \$20 million annually for Cuba democracy programs “until the dictatorship ceases to exist.” This would roughly double the amount currently spent on Cuba democracy programs.

The report also set forth detailed plans of how the U.S. government, along with the international community and the Cuban community abroad, could provide assistance to a Cuban transition government to help it respond to critical humanitarian and social needs, to conduct free and fair elections, and to move toward a market-based economy. The report also outlined a series of preparatory steps in the areas of government organization, electoral preparation, and anticipating humanitarian and social needs that the U.S. government could take now, before Cuba’s transition begins, so that it would be well prepared in the event that assistance was requested by the new Cuban government.

The commission’s second report received a mixed response from Cuba’s dissident community. Although some dissidents, like former political prisoner Vladimiro Roca, maintain that they would welcome any U.S. assistance that helps support the Cuban dissident movement, others expressed concerns about the report. Dissident economist and former political prisoner Oscar Espinosa Chepe stressed that Cubans have to be the ones to solve their own problems. According to Chepe, “We are thankful for the solidarity we have received from North America, Europe, and elsewhere, but we request that they do not meddle in our country.”<sup>44</sup> Miriam Leiva, a founding member of the Ladies in White, a human rights organization, expressed concern that the report could serve as a rationale for the government to imprison dissidents.<sup>45</sup> Leiva also faulted the commission’s report for presuming what a Cuban transition must be before U.S. recognition or assistance can be provided. According to Leiva, “Only we Cubans, of our own volition ... can decide issues of such singular importance. Cubans on the island have sufficient intellectual ability to tackle a difficult, peaceful transition and reconcile with other Cubans here and abroad.”<sup>46</sup>

## **U.S. Reaction to Cuba’s Political Succession**

In response to Fidel Castro’s announcement that he was temporarily ceding power to his brother Raúl, President Bush issued a statement on August 3, 2006, that “the United States is absolutely committed to supporting the Cuban people’s aspiration for democracy and freedom.” The President urged “the Cuban people to work for democratic change” and pledged U.S. support to the Cuban people in their effort to build a transitional government in Cuba. At the time, U.S. officials indicated that there were no plans for the United States to “reach out” to the new leader. Secretary of State Condoleezza Rice reiterated U.S. support for the Cuban people in an August 4, 2006, statement broadcast on Radio and TV Marti. According to Secretary Rice, “All Cubans who desire peaceful democratic change can count on the support of the United States.”<sup>47</sup>

Although there was some U.S. concern that political change in Cuba could prompt a migration crisis, there was no unusual traffic after Castro ceded provisional power to his brother. The U.S.

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<sup>43</sup> U.S. Department of State, Second Report of the Commission for Assistance to a Free Cuba, Briefing, July 10, 2006.

<sup>44</sup> Nicholas Krlev, “Bush OKs Initiative to Support Opposition,” *Washington Times*, July 11, 2006.

<sup>45</sup> Frances Robles and Pablo Bachelet, “Plan for Change in Cuba Gets OK,” *Miami Herald*, July 11, 2006.

<sup>46</sup> Miriam Leiva, “We Cubans Must Decide,” *Miami Herald*, July 15, 2006.

<sup>47</sup> U.S. Department of State, “Secretary of State Condoleezza Rice Message to the People of Cuba,” August 4, 2006.

Coast Guard had plans to respond to such a migration crisis, with support from the Navy if needed. In her August 4, 2006, message to the Cuban people, Secretary of State Rice encouraged “the Cuban people to work at home for positive change.” Department of Homeland Security officials also announced several measures to discourage Cubans from risking their lives on the open seas. U.S. officials also discouraged those in the Cuban American community wanting to travel by boat to Cuba to speed political change in Cuba. (For more, see “Migration Issues” below.)

### *Response to Raúl's Overtures*

Raúl Castro asserted in an August 18, 2006, published interview that Cuba has “always been disposed to normalize relations on an equal plane,” but at the same time he expressed strong opposition to current U.S. policy toward Cuba, which he described as “arrogant and interventionist.”<sup>48</sup> In response, Assistant Secretary of State for Western Hemisphere Affairs Thomas Shannon reiterated a U.S. offer to Cuba, first articulated by President Bush in May 2002, that the Administration was willing to work with Congress to lift U.S. economic sanctions if Cuba were to begin a political opening and a transition to democracy. According to Shannon, the Bush Administration remained prepared to work with Congress for ways to lift the embargo if Cuba was prepared to free political prisoners, respect human rights, permit the creation of independent organizations, and create a mechanism and pathway toward free and fair elections.<sup>49</sup>

In a December 2, 2006, speech, Raúl reiterated an offer to negotiate with the United States. He said that “we are willing to resolve at the negotiating table the longstanding dispute between the United States and Cuba, of course, provided they accept, as we have previously said, our condition as a country that will not tolerate any blemishes on its independence, and as long as said resolution is based on the principles of equality, reciprocity, non-interference, and mutual respect.”<sup>50</sup>

On July 26, 2007, in a speech on Cuba’s revolutionary anniversary (commemorating the 1953 attack on the Moncada military barracks), Raúl Castro reiterated for the third time an offer to engage in dialogue with the United States, and strongly criticized U.S. trade and economic sanctions on Cuba. A U.S. State Department spokesman responded that “the only real dialogue that’s needed is with the Cuban people.”<sup>51</sup>

In the second half of 2007, President Bush and other U.S. officials continued to call for a transition to democracy in Cuba. In a September 25, 2007, speech before the U.N. General Assembly, President Bush stated that “the long rule of a cruel dictator is nearing its end,” and called on the United Nations to insist on free speech, free assembly, and free elections as Cuba “enters a period of transition.”<sup>52</sup> U.S. Commerce Secretary Carlos Gutierrez stated in a speech on

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<sup>48</sup> “No Enemy Can Defeat Us,” interview of Raúl Castro by Laszar Barredo Medina, *Diario Granma*, August 18, 2006.

<sup>49</sup> U.S. Department of State, “U.S. Policy Toward Cuba,” Thomas Shannon, Assistant Secretary for Western Hemisphere Affairs, August 23, 2006.

<sup>50</sup> “English Transcript of Raul Castro’s Speech,” *Miami Herald*, December 2, 2006.

<sup>51</sup> Frances Robles, “Raúl Again Offers ‘Olive Branch’ to U.S.,” *Miami Herald*, July 27, 2007; “U.S. Government Rejects Dialogue with Cuba,” *EFE*, July 27, 2007.

<sup>52</sup> White House, Office of the Press Secretary, “President Bush Addresses the United Nations General Assembly,” September 25, 2007.

September 17 that “unless the regime changes, our policy will not,” but indicated that the United States is “prepared to respond to genuine democratic change in Cuba.”<sup>53</sup>

On October 24, 2007, President Bush made a policy speech on Cuba that reflected a continuation of the sanctions-based approach toward Cuba. According to the President, “As long as the [Cuban] regime maintains its monopoly over the political and economic life of the Cuban people, the United States will keep the embargo in place.” In his speech, President Bush also sent a message to Cuban military, police, and government officials that “when Cubans rise up to demand their liberty,” they have a choice to embrace the Cuban people’s desire for change or “defend a disgraced and dying order by using force.” The President conveyed to these officials that “there is a place for you in a free Cuba.”<sup>54</sup>

### ***Response to Raúl’s Official Selection as President***

In the aftermath of Fidel Castro’s February 19, 2008, announcement that he was officially stepping down as head of state, President Bush maintained that he viewed “this as a period of transition and it should be the beginning of a democratic transition in Cuba.” State Department officials made clear that U.S. policy would not change. On February 24, 2008, the day that Raúl Castro officially became Cuba’s head of state, Secretary of State Condoleezza Rice issued a statement urging “the Cuban government to begin a process of peaceful, democratic change by releasing all political prisoners, respecting human rights, and creating a clear pathway towards free and fair elections.”

In remarks on Cuba policy in early March 2008, President Bush maintained that in order to improve U.S.-Cuban relations, “what needs to change is not the United States; what needs to change is Cuba.” The President asserted that Cuba “must release all political prisoners ... have respect for human rights in word and deed, and pave the way for free and fair elections.”<sup>55</sup> He reiterated these words again in a speech to the Council of the Americas on May 7, 2008.<sup>56</sup> On May 21, 2008, President Bush called for the Cuban government to take steps to improve life for the Cuban people, including opening up access to the Internet. He also announced that the United States would change regulations to allow Americans to send mobile phones to family members in Cuba.<sup>57</sup>

## **Obama Administration Policy**

During the electoral campaign, President Obama had pledged to lift restrictions on family travel to Cuba as well as restrictions on Cuban Americans sending remittances to Cuba. At the same time, he also pledged to maintain the embargo as a source of leverage to bring about change in Cuba. However, Obama also asserted that if the Cuban government takes significant steps toward democracy, beginning with the freeing of all political prisoners, then the United States would take steps to normalize relations and ease the embargo. He also maintained that, after careful

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<sup>53</sup> U.S. Department of Commerce, “Commerce Secretary Carlos M. Gutierrez Remarks at the Heritage Foundation,” September 17, 2007.

<sup>54</sup> White House, “President Bush Discusses Cuba Policy,” October 24, 2007.

<sup>55</sup> White House, “President Bush Delivers Remarks on Cuba,” March 7, 2008.

<sup>56</sup> “Text of Bush Speech to Council of the Americas,” *Miami Herald*, May 9, 2008.

<sup>57</sup> White House, “President Bush Discusses Cuba, Marks Day of Solidarity,” May 21, 2008.

preparation, his Administration would pursue direct diplomacy with Cuba without preconditions, but only when there is an opportunity to advance U.S. interests and advance the cause of freedom for the Cuban people.<sup>58</sup>

In March 2009, Congress took some action ahead of the Administration to change U.S. policy toward Cuba when it approved the FY2009 omnibus appropriations measure (P.L. 111-8). The measure included several provisions easing Cuba sanctions, including restrictions on family travel.

Observers had anticipated that President Obama would fulfill his campaign pledges with regard to lifting restrictions on family travel and remittances before the fifth Summit of the Americas in Trinidad and Tobago scheduled for April 17-19, 2009. This in fact occurred on April 13, 2009, when the Obama Administration announced several significant measures to ease U.S. sanctions on Cuba. The President announced that all restrictions on family travel and on remittances to family members in Cuba would be lifted. This superseded the action taken by Congress in March that had essentially reverted family travel restrictions to as they were in 2004 before they were tightened. The Administration also announced that measures would be taken to increase telecommunications links with Cuba and to expand the scope of eligible humanitarian donations through gift parcels.<sup>59</sup> (Both the Treasury and Commerce Department amended the Cuba embargo regulations in early September 2009 to implement these policy changes.)

At the Summit of the Americas, President Obama maintained that “the United States seeks a new beginning with Cuba.” While recognizing that it will take time to “overcome decades of mistrust,” the President said “there are critical steps we can take toward a new day.” He stated that he was prepared to have his Administration “engage with the Cuban government on a wide range of issues—from drugs, migration, and economic issues, to human rights, free speech, and democratic reform.”<sup>60</sup> The President maintained that he was “not interested in talking just for the sake of talking,” but said he believed that U.S.-Cuban relations could move in a new direction.

In June 2009, the State Department turned off the electronic billboard at the U.S. Interests Section in Havana that had been had been set up in 2006 and had featured news and pro-democracy messages that irked the Cuban government. Earlier in the year, the Cuban government had taken down anti-U.S. billboards around the U.S. mission.

Cuba and the United States also agreed to restart the semi-annual migration talks that had been suspended by the United States in 2004 and to begin new talks on direct postal service between the two countries. To date, three rounds of migration talks have been held, with the most recent held in Washington in June 2010. (For more details, see “Migration Talks” below.)

In September 2009, the United States and Cuba held talks in Havana on resuming direct mail service between the two countries.<sup>61</sup> The Department of State expressed satisfaction with the

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<sup>58</sup> “Remarks of Senator Barack Obama, Renewing U.S. Leadership in the Americas,” May 23, 2008, and “Renewing U.S. Leadership in the Americas,” Factsheet, June 6, 2008, BarackObama.com.

<sup>59</sup> White House, “Fact Sheet: Reaching Out to the Cuban People,” April 13, 2009.

<sup>60</sup> White House, “Remarks by the President At the Summit of the Americas Opening Ceremony,” April 17, 2009.

<sup>61</sup> Since the early 1960s, mail to and from Cuba has arrived via third countries, which results in extensive delays in mail between the two countries. The Cuban Democracy Act of 1992 (P.L. 102-484, Title XVII, Section 1705(f)) has a provision requiring the U.S. Postal Service to take necessary actions to provide direct mail service to and from Cuba, including, in the absence of common carrier service between the 2 countries, the use of charter service providers. Past (continued...)

talks, which included discussion on issues related to the transportation, quality, and security of mail service. According to the State Department, both sides agreed that they would meet again after consultations with their governments.<sup>62</sup> There reportedly has been working level discussion and cooperation on the issue, but no new talks have been scheduled.

In early December 2009, Alan Gross, an American subcontractor working on USAID-funded Cuba democracy projects in Cuba was arrested in Havana. He was reported to have distributed communications equipment such as cell phones and laptops. Cuban officials claimed that the subcontractor was a spy, but U.S. officials strongly denied that he was working with the U.S. intelligence services. Members of Congress have raised considerable concern about Mr. Gross's detention. In June 2010, Secretary of State Clinton has said that Mr. Gross's detention is harming U.S.-Cuban relations, and that his release would be viewed favorably. On December 3, 2010, the one-year anniversary of Mr. Gross's detention, the State Department issued a statement again calling for his release and maintaining that "the continued detention of Alan Gross is a major impediment to advancing the dialogue between our two countries."<sup>63</sup> (Also see "December 2009 Detainment of American Subcontractor" below.)

Cuban officials had become increasingly critical of the Obama Administration in late 2009. In December 2009, Cuban Foreign Minister Bruno Rodriguez criticized President Obama as "imperial" and "arrogant," which prompted former U.S. drug czar Barry McCaffrey to withdraw from a planned trip to Cuba in early January 2010 to discuss drug trafficking issues.

In 2010, the Obama Administration expressed significant concern about the poor human rights situation. In the semi-annual migration talks in February, U.S. officials urged Cuban officials to provide imprisoned hunger striker Orlando Zapata Tamayo with all necessary medical care. After Zapata's death, U.S. officials called attention to the more than 200 political prisoners held by Cuba and called for their immediate release.<sup>64</sup> President Obama issued a statement on March 24, 2010, expressing deep concern about the human rights situation in Cuba, including the death of Zapata, the repression of the Ladies in White, and increased harassment of those who dare to express the desires of their fellow Cuban citizens. He asserted that these events underscore that "Cuban authorities continue to respond to the aspirations of the Cuban people with a clenched fist." The President called for the end of repression, the immediate and unconditional release of all political prisoners, and respect for the basic rights of the Cuban people. The President noted that he has taken steps during the year to reach out to the Cuban people and to signal his desire to seek a new era in relations with the government of Cuba. He asserted that he remains "committed to supporting the simple desire of the Cuban people to freely determine their future and to enjoy

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(...continued)

U.S. attempts to negotiate such service were rejected by Cuba, reportedly because Cuba wanted the issue to be part of a larger normalization of commercial air traffic. Both the Clinton and Bush Administrations had called for negotiations to restore direct mail service.

<sup>62</sup> "Cuba: U.S.-Cuba Postal Talks," U.S. Department of State, Question taken at September 17, 2009 Daily Press Briefing, September 18, 2009.

<sup>63</sup> U.S. Department of State, "One Year Continued Incarceration of Alan Gross," Philip J. Crowley, Assistant Secretary Bureau of Public Affairs, December 3, 2010.

<sup>64</sup> U.S. Department of State, Philip J. Crowley, Assistant Secretary, Bureau of Public Affairs, "Death of Cuban Dissident Orlando Zapata Tamayo," February 24, 2010.

the rights and freedoms that define the Americas, and that should be universal to all human beings.”<sup>65</sup>

In response to the Cuban Catholic Church’s July 7, 2010, announcement that 52 political prisoners would be released, Secretary of State Clinton said that it was “a positive sign” and that the United States welcomed it.<sup>66</sup> A subsequent State Department statement maintained that “this is a positive development that we hope will represent a step towards increased respect for human rights and fundamental freedoms in Cuba.” In the same statement, the State Department called for the immediate and unconditional release of all political prisoners, and maintained that those released should be able to “decide for themselves whether to remain in Cuba or travel to another country.”<sup>67</sup>

In August 2010, there were numerous press reports maintaining that the Obama Administration would be taking action to ease travel restrictions further and allow all Americans to send remittances to Cuba. Various reports indicated that the relaxation of the travel regulations would involve looser restrictions on educational and religious travel as well as other types of people-to-people travel. The number of charter flights and U.S. cities (beyond Los Angeles, Miami, and New York) would also reportedly be expanded. Some reports also indicated that restrictions could be eased to make it easier to pay in the United States for telecommunications services in Cuba as a means of increasing telecommunications links among Cuban families.<sup>68</sup> Many of the reported forthcoming policy changes on travel and remittances appeared similar to policy that was in effect during the last years of the Clinton Administration and the early years of the Bush Administration until 2004. By the end of the year, however, the Administration had not announced any of the reported policy changes.

As noted above, the State Department issued a statement on the one-year anniversary of the incarceration of USAID subcontractor Alan Gross in December 2010. The statement called for Mr. Gross’s release and maintained that his continued detention was a major impediment to advancing dialogue between the United States and Cuba.

## **Issues in U.S.-Cuban Relations**

### **Restrictions on Travel and Remittances**

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

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<sup>65</sup> White House, “Statement by the President on the Human Rights Situation in Cuba,” March 24, 2010.

<sup>66</sup> “Secretary of State Clinton Holds Media Availability with Jordan Foreign Minister Nasser Judeh,” *CQ Newsmaker Transcripts*, July 8, 2010.

<sup>67</sup> U.S. Department of State, “Release of Cuban Political Prisoners,” Press Release, July 13, 2010.

<sup>68</sup> Juan O. Tamayo, “U.S. Could Ease Restrictions on ‘Purposeful’ Visits to Cuba,” *Miami Herald*, August 7, 2010; Ginger Thompson, “U.S. Said to Plan Easing Rules for Travel to Cuba,” *New York Times*, August 17, 2010; Mary Beth Sheridan, “U.S. Preparing to Expand Travel to Cuba,” *Washington Post*, August 18, 2010.

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 increased, and restrictions on travel and on private remittances to Cuba were 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.

As noted above, during the 2008 electoral campaign, Barack Obama pledged to lift restrictions on family travel to Cuba as well as restrictions on Cuban Americans sending remittances to Cuba. Senator Hillary Clinton reiterated President Obama's pledge during her confirmation hearing for Secretary of State in January 2009.

In March 2009, Congress took action on its own in the 111<sup>th</sup> Congress by including two provisions in the FY2009 omnibus appropriations measure (P.L. 111-8) that ease sanctions on travel to Cuba. As implemented by the Treasury Department, family travel was once again allowed once every 12 months to visit a close relative for an unlimited length of stay, and the limit for daily expenditure allowed by family travelers became the same as for other authorized travelers to Cuba (State Department maximum per diem rate for Havana, currently \$179 day). The definition of "close relative" was expanded to mean any individual related to the traveler by blood, marriage, or adoption who is no more than three generations removed from that person.

The omnibus measure also included a provision requiring a general license for travel related to the marketing and sale of agricultural and medical goods to Cuba. The Treasury Department's Office of Foreign Assets Control ultimately issued regulations implementing this omnibus provision on September 3, 2009. The regulations require a written report at least 14 days before departure identifying both the traveler and the producer or distributor and describing the purpose and scope of such travel. Another written report is required within 14 days of return from Cuba describing the activities conducted, the persons met, and the expenses incurred. The regulations also require that such travelers under this provision be regularly employed by a producer or distributor of the agricultural commodities or medical products or an entity duly appointed to represent such a producer or distributor. The activity schedules for such travelers cannot include free time, travel, or recreation in excess of that consistent with a full work schedule.

On April 13, 2009, the Obama Administration announced several significant measures to ease U.S. sanctions on Cuba. Fulfilling a campaign pledge, President Obama announced that all restrictions on family travel and on remittances to family members in Cuba would be lifted. This significantly superseded the action taken by Congress in March that had essentially reverted family travel restrictions to as they had been before they were tightened in 2004. Under the new policy announced by the Administration in April, there would be no limitations on the frequency or duration of family visits, and the 44-pound limitation on accompanied baggage would be removed. Family travelers would be able to spend the same as allowed for other travelers, up to \$179 per day. With regard to family remittances, the previous limitation of no more than \$300 per quarter would be removed and there would be no restriction on the amount or frequency of the remittances. Authorized travelers would be able once again carry up to \$3,000 in remittances.<sup>69</sup>

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<sup>69</sup> White House, "Fact Sheet: Reaching Out to the Cuban People," April 13, 2009.

Regulations for the above policy changes were issued by the Treasury and Commerce Departments on September 3, 2009.

As noted above, there were numerous press reports in August 2010 maintaining that President Obama would take further action to ease restrictions on travel and remittances by making it easier to engage in educational, religious, and other types of people-to-people travel and allowing all Americans to send remittances to Cuba. The reported changes appeared similar to policy that was in place from 1999 under the Clinton Administration through mid-2004 under the Bush Administration. By the end of the 111<sup>th</sup> Congress, however, the Administration had not announced any policy changes.

Major arguments made for lifting the Cuba travel ban are that it abridges the rights of ordinary Americans to travel; it hinders efforts to influence conditions in Cuba and may be aiding Castro by helping restrict the flow of information; 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 potentially 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.

Two house hearings were held in the 111<sup>th</sup> Congress on the issue of restrictions on travel to Cuba. On November 19, 2009, the House Committee on Foreign Affairs held a hearing on U.S. restrictions on travel to Cuba entitled "Is it Time to Lift the Ban on Travel to Cuba?" that featured former U.S. government officials and other private witnesses. On April 29, 2010, the House Ways and Means Committee, Subcommittee on Trade, held a hearing on U.S.-Cuba policy that examined whether relaxing current Cuba travel and trade restrictions would advance U.S. economic objectives, as well as U.S. political and human rights goals in Cuba.

With regard to legislative action, the House Agriculture Committee reported out H.R. 4645 (Peterson) on June 30, 2010, by a vote of 25-20, a bill that would have lifted all restrictions on travel to Cuba and also would have eased restrictions on payment mechanisms for U.S. agricultural exports to Cuba (also see "Agricultural Exports and Sanctions" below). The House Committee on Foreign Affairs was scheduled to hold a markup of the bill on September 29, 2010, but postponed its consideration, and no further action was taken. An identical companion bill in the Senate, S. 3112 (Klobuchar), had been introduced March 15, 2010.

Several other legislative initiatives were introduced in the 111<sup>th</sup> Congress that would have eased Cuba travel restrictions: H.R. 874 (Delahunt)/S. 428 (Dorgan) and H.R. 1528 (Rangel) would have prohibited restrictions on travel to Cuba; H.R. 188 (Serrano), H.R. 1530 (Rangel), and H.R. 2272 (Rush), which would have lifted the overall embargo on Cuba, would also have lifted travel restrictions; H.R. 1531 (Rangel)/S. 1089 (Baucus), which would have removed some restrictions on the export of U.S. agricultural products to Cuba, would also have prohibited Cuba travel restrictions; H.R. 332 (Lee) would have eased restrictions on educational travel; S. 774 (Dorgan), H.R. 1918 (Flake), and S. 1517 (Murkowski) would have allowed for travel related to hydrocarbon exploration and extraction activities. In contrast, H.Con.Res. 132 (Tiahrt) would have called for the fulfillment of certain democratic conditions before the United States increases trade and tourism to Cuba.

(For additional information, see CRS Report RL31139, *Cuba: U.S. Restrictions on Travel and Remittances*.)

## **Agricultural Exports and Sanctions**

U.S. commercial agricultural exports to Cuba have been allowed for several years, but with numerous restrictions and licensing requirements. The 106<sup>th</sup> Congress passed the Trade Sanctions Reform and Export Enhancement Act of 2000 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 also 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.

Since 2002, the United States has been Cuba's largest supplier of food and agricultural products.<sup>70</sup> Cuba has purchased over \$3.2 billion in agricultural products from the United States since late 2001. Overall U.S. exports to Cuba rose from about \$7 million in 2001 to \$404 million in 2004. U.S. exports to Cuba declined in 2005 and 2006 to \$369 million and \$340 million, respectively, but increased to \$447 million in 2007. In 2008, U.S. exports to Cuba rose to \$712 million, far higher than in previous years, in part because of the rise in food prices and because of Cuba's increased food needs in the aftermath of several hurricanes and tropical storms that severely damaged the country's agricultural sector. In 2009, however, U.S. exports to Cuba declined to \$533 million, 25% lower than the previous year.<sup>71</sup> The decline was largely related to Cuba's shortage of hard currency.<sup>72</sup> In 2010, U.S. agricultural exports to Cuba have continued to fall. From January through October 2010, U.S. exports to Cuba amounted to \$311 million, down 31% from the same period in 2009. Analysts again cite Cuba's shortage of hard currency as the main reason for the decline.<sup>73</sup>

In February 2005, OFAC amended the Cuba embargo regulations 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. U.S. agricultural exporters and some Members of Congress strongly objected that the action constituted a new sanction that violated the intent of TSRA and could jeopardize millions of dollars in U.S. agricultural sales to Cuba. OFAC Director Robert Werner maintained that the clarification "conforms to the common understanding of the term in international trade."<sup>74</sup> 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 was aimed at ensuring 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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<sup>70</sup> U.S. Department of Agriculture, Foreign Agricultural Service, Office of Global Analysis, "Cuba's Food & Agriculture Situation Report," March 2008.

<sup>71</sup> Global Trade Atlas, which uses Department of Commerce Statistics.

<sup>72</sup> Larry Luxner. "Cash-Strapped Cuba Cut U.S. Food Imports by 26% in '09," *CubaNews*, February 2010, p. 2.

<sup>73</sup> Juan Tamayo, "Big Drop in U.S. Agricultural Sales to Cuba," *Miami Herald*, July 29, 2010.

<sup>74</sup> 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.<sup>75</sup>

In December 2009, Congress took action in the FY2010 omnibus appropriations measure (P.L. 111-117) to define, during FY2010, “payment of cash in advance” as payment before the transfer of title to, and control of, the exported items to the Cuban purchaser. This overturned OFAC’s February 2005 clarification that payment had to be received before vessels could leave U.S. ports. The 111<sup>th</sup> Congress did not complete action on FY2011 Financial Services and General Government appropriations legislation, but instead approved a series of short-term continuing resolutions (P.L. 111-242, as amended), the last of which provided funding for federal agencies through March 4, 2011 under conditions provided in enacted FY2010 appropriations measures.

Several legislative initiatives introduced in the 111<sup>th</sup> Congress would have made permanent the “payment of cash in advance” provision, but no action was completed on these measures. On June 30, 2010, the House Agriculture Committee reported out H.R. 4645 (Peterson), which would have permanently changed the definition of “payment of cash in advance,” allowed direct transfers between U.S. and Cuban financial institutions for payment for products sold to Cuba under TSRA, and also would have lifted all restrictions on travel to Cuba. No further action was taken on the measure. The House Committee on Agriculture had held a hearing to review U.S. agricultural sales to Cuba on March 11, 2010. (For more details, see “Legislative Action and Initiatives on Agricultural Sanctions” below.)

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. 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 so close to the United States. Some exporters want to change U.S. restrictions so that they can sell agriculture and farm equipment to Cuba.<sup>76</sup> Agricultural exporters who support the lifting of the prohibition on financing contend that allowing such financing would help smaller U.S. companies expand purchases to Cuba more rapidly.<sup>77</sup> On July 19, 2007, the U.S. International Trade Commission issued a report, requested by the Senate Committee on Finance, maintaining that the U.S. share of Cuba’s agricultural, fish, and forest imports would rise from one-third to between one-half and two-thirds if trade restrictions were lifted. (See the full report available at [http://www.usitc.gov/ext\\_relations/news\\_release/2007/er0719ee1.htm](http://www.usitc.gov/ext_relations/news_release/2007/er0719ee1.htm).)

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

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<sup>75</sup> Christopher S. Rugaber, “Treasury Clarifies Cuba Farm Export Rule, and Baucus Relents on Nominees,” *International Trade Reporter*, August 4, 2005.

<sup>76</sup> “Ag Groups Split Over Trade With Cuba,” *Congress Daily AM*, National Journal, February 11, 2003.

<sup>77</sup> “Farm Equipment Exports Likely to Face Tough Opposition from White House, Congress,” *Cuba Trader*, Vol. III, No. 7, February 17, 2003.

continuation of the prohibition on financing for agricultural exports to Cuba because it ensures that they will be paid.

## Legislative Action and Initiatives on Agricultural Sanctions

The 111<sup>th</sup> Congress took action in March 2009 by including two provisions in the FY2009 omnibus appropriations measure (P.L. 111-8) intended to ease sanctions related to the payment terms and travel related to the export of U.S. agricultural products to Cuba.

- Section 620, Division D, of the FY2009 omnibus measure amended TSRA to require the Secretary of the Treasury to issue regulations for travel to, from, or within Cuba under a general license for the marketing and sale of agricultural and medical goods. Such travel had required a specific license from OFAC, issued on a case by case basis. On March 9, 2009, Secretary of the Treasury Geithner stated in a letter published in the *Congressional Record* that the regulations issued pursuant to this provision “would provide that the representatives of only a narrow class of businesses would be eligible, under a new general license, to travel to market and sell agricultural and medical goods.” The Secretary also maintained that “any business using the general license would be required to provide both advance written notice outlining the purpose and scope of the planned travel and, upon return, a report outlining the activities conducted, including the persons with whom they met, the expenses incurred, and business conducted in Cuba.”<sup>78</sup> The regulations ultimately were issued on September 3, 2009, and included the reporting requirements promised by Secretary Geithner.<sup>79</sup>
- Section 622, Division D, of the FY2009 omnibus measure prohibited funds in the Act from being used to administer, implement, or enforce an amendment to the Cuban embargo regulations on February 25, 2005, requiring that U.S. agricultural exporters using the “payment of cash in advance” payment mechanism for selling their goods to Cuba must be paid in cash for their goods before the goods leave U.S. ports. As noted above, TSRA requires either the “payment of cash of advance” for such exports (or financing by third country financial institutions), but does not provide a definition of cash in advance. Prior to the February 2005 amendment to the Cuban embargo regulations, U.S. exporters could be paid for the goods before they were unloaded in Cuba. OFAC guidance on the implementation of this provision stated that TSRA’s statutory provisions remain in place that agricultural exports to Cuba be either paid for by “cash in advance” or financed using a third-country bank.<sup>80</sup> Secretary of the Treasury Geithner provided additional guidance on the implementation of this provision in a letter published in the *Congressional Record* that stated that, “exporters will still be required to receive payment in advance of shipment.”<sup>81</sup> This continued the Bush Administration policy imposed in February 2005. Given the Secretary’s interpretation, this provision had little, if any, practical effect. While the

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<sup>78</sup> *Congressional Record*, March 10, 2009, p. S2933.

<sup>79</sup> *Federal Register*, September 8, 2009, pp. 46000-46007.

<sup>80</sup> U.S. Department of the Treasury, Office of Foreign Assets Control, “Guidance on Implementation of Cuba Travel and Trade-Related Provisions of the Omnibus Appropriations Act, 2009,” March 11, 2009.

<sup>81</sup> *Congressional Record*, March 10, 2009, p. S2933.

Secretary's response ameliorated the concerns that several Senators had regarding the provision, it also triggered concerns by other Senators who maintained that the Secretary's action ignored the legislative intent of the Cuba provision to ease restrictions on agricultural sales to Cuba.<sup>82</sup>

In other significant legislative action in December 2009, Congress included a clarifying provision in the Section 619 of Division C of the Consolidated Appropriations Act, 2010 (H.R. 3288/P.L. 111-117) related to the issue of payment of cash in advance for U.S. agricultural exports to Cuba. The provision states that during FY2010, the term "payment of cash in advance" as used in TSRA "shall be interpreted as payment before the transfer of title to, and control of, the exported items to the Cuban purchaser." Supporters of the provision maintained that it restored congressional intent on the matter, and will make it easier for U.S. agricultural producers to export to Cuba, while opponents maintain the provision constituted a foreign policy change included in a must-pass spending bill without appropriate congressional consideration.<sup>83</sup> The Administration issued regulations implementing this provision in early March 2010. The regulations maintained that the definition applied to items delivered by September 30, 2010, or delivered pursuant to a contract entered into by September 30, 2010, and shipped within 12 months of the signing of the contract.<sup>84</sup>

This "payment of cash in advance" provision had been included in the House version of the FY2010 Financial Services and General Government Appropriations Act, H.R. 3170, approved on July 16, 2009. The Senate version of the bill, S. 1432, reported out of committee on July 10, 2009 (S.Rept. 111-43), also had an identical provision. In its report to the bill (S.Rept. 111-43), the Senate Appropriations Committee maintained that it was aware that the Treasury Department was continuing to require the sellers of agricultural goods to Cuba to receive cash payments in advance of shipping rather than in advance of delivering the goods, and asserted that the policy impedes U.S. sales since it increases the cost of doing business. In the report, the committee urged the Treasury Department to use its rulemaking authority to permanently amend the Cuban Assets Control Regulations and remove impediments to U.S. agricultural sales to Cuba.

For FY2011, the Senate Appropriations Committee included a provision in the FY2011 Financial Services and General Government Appropriations Act (S. 3677, section 621) that would have continued to define during fiscal year 2011 "payment of cash in advance" under TSRA as payment before the transfer of title to, and control of, the exported items to the Cuban purchaser. This would have extended the provision from the FY2010 Consolidated Appropriation Act noted above. The bill was reported out of committee on July 29, 2010 (S.Rept. 111-238), but no further action was taken. While the House Appropriations Committee version of the bill was not officially introduced, the bill reportedly would have included a provision similar to that in the Senate bill regarding payment of cash in advance under TSRA.<sup>85</sup> The 111<sup>th</sup> Congress did not complete action on the FY2011 Financial Services and General Government appropriations

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<sup>82</sup> Caitlin Webber, "Obama Accused of Ignoring Legislators' Bid to Ease Cuba Trade Restrictions," *CQ Today*, March 18, 2009; and Jerry Hagstrom, "Bipartisan Senate Group Pushes Geithner on Cuba Trade," *Congress Daily PM, National Journal*, March 17, 2009.

<sup>83</sup> "New Law Lets Cuba Pay U.S. Suppliers Directly," *CubaNews*, December 2009; Rosella Brevetti, "Agriculture: Senate OKs Provision Facilitating U.S. Agricultural Exports to Cuba," *International Trade Reporter*, December 17, 2009.

<sup>84</sup> *Federal Register*, March 10, 2010, pp. 10996-10997.

<sup>85</sup> House Committee on Appropriations, Subcommittee on Financial Services and General Government, "Statement of Chairman José E. Serrano, FY2011 Financial Services and General Government Appropriations Bill," July 29, 2010.

measure. Instead, it approved a series of short-term continuing resolutions (P.L. 111-242, as amended), the last of which provided funding for federal agencies through March 4, 2011, under conditions provided in enacted FY2010 appropriations measures. This included continuation of the “payment of cash in advance” provision.

Several other legislative initiatives in the 111<sup>th</sup> Congress would have eased restrictions on the sale U.S. agricultural exports to Cuba. H.R. 188 (Serrano), H.R. 1530 (Rangel), and H.R. 2272 (Rush) would have lifted overall economic sanctions on Cuba, including restrictions on agricultural exports. H.R. 2272 also would have extended nondiscriminatory trade treatment to Cuba. H.R. 1737 (Moran) would have focused on ways to facilitate U.S. agricultural exports to Cuba. The measure would have amended TSRA to clarify the definition of payment of cash in advance so that payments would not have to be made before the goods are shipped from U.S. ports, and would have allowed direct transfers between U.S. and Cuban financial institutions to pay for U.S. agricultural exports. Similar but not identical bills H.R. 1531 (Rangel) and S. 1089 (Baucus) included the same provisions as in H.R. 1737, but also would have established a U.S. agricultural export promotion program that would be funded by a \$1 increase in the airport ticket tax for U.S.-Cuba air travel. Both measures would also have lifted overall restrictions on travel to Cuba.

Finally, identical bills H.R. 4645 (Peterson) and S. 3112 (Klobuchar) would have amended TSRA to clarify the definition of payment of cash in advance, authorize direct transfer between Cuban and U.S. financial institutions for sales under TSRA, and prohibit restrictions on travel to Cuba. As noted above, the House Agriculture Committee reported out H.R. 4645 on June 30, 2010, by a vote of 25-20, but no further action was taken on the measure.

## **Trademark Sanction<sup>86</sup>**

For over a decade, the United States has imposed a sanction that denies protection for trademarks connected with businesses confiscated from their owners by the Cuban government. 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. The measure was enacted because of a dispute between the French spirits company, Pernod Ricard, and the Bermuda-based Bacardi Ltd. Pernod Ricard entered into a joint venture in 1993 with the Cuban government to produce and export Havana Club rum. Bacardi maintains that it holds the right to the Havana Club name because in 1995 it entered into an agreement for the Havana Club trademark with the Arechabala family, who had originally produced the rum until its assets and property were confiscated by the Cuban government in 1960. 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.

The European Union initiated World Trade Organization dispute settlement proceedings in June 2000, maintaining that the U.S. law violates the Agreement on Trade-Related Aspects of Intellectual Property (TRIPS). In January 2002, the WTO ultimately found that the trademark

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<sup>86</sup> For additional information, see CRS Report RS21764, *Restricting Trademark Rights of Cubans: WTO Decision and Congressional Response*, by Margaret Mikyung Lee.

sanction violated WTO provisions on national treatment and most-favored-nation obligations in the TRIPS Agreement.

On March 28, 2002, the United States agreed that it would come into compliance with the WTO ruling through legislative action by January 3, 2003.<sup>87</sup> That deadline was extended several times since no legislative action had been taken to bring Section 211 into compliance with the WTO ruling. On July 1, 2005, however, in an EU-U.S. bilateral agreement, the EU agreed that it would not request authorization to retaliate at that time, but reserved the right to do so at a future date, and the United States agreed not to block a future EU request.<sup>88</sup> On August 3, 2006, the U.S. Patent and Trademark Office announced that Cuba's Havana Club trademark registration was "cancelled/expired," a week after OFAC had denied a Cuban government company the license that it needed to renew the registration of the trademark.<sup>89</sup>

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 claim is based on a foreign compensation."<sup>90</sup> Others want Section 211 repealed altogether. They argue that the law endangers over 5,000 trademarks of over 500 U.S. companies registered in Cuba.<sup>91</sup>

The House Committee on the Judiciary held a March 2, 2010, hearing on the "Domestic and International Trademark Implications of HAVANA CLUB and Section 211 of the Omnibus Appropriations Act of 2009." (See [http://judiciary.house.gov/hearings/hear\\_100303.html](http://judiciary.house.gov/hearings/hear_100303.html).)

Several legislative initiatives were introduced during the 111<sup>th</sup> Congress reflecting these two approaches to bring Section 211 into compliance with the WTO ruling, but no action was taken on these measures. Identical bills H.R. 1103 (Wexler) and S. 1234 (Lieberman) would have amended Section 211 with a narrow fix to bring it into compliance with the WTO ruling, while several measures, H.R. 188 (Serrano), H.R. 1530 (Rangel), H.R. 1531 (Rangel), H.R. 2272 (Rush), and S. 1089 would have repealed Section 211 altogether. The July 2005 EU-U.S. bilateral agreement, in which the EU agreed not to retaliate against the United States, but reserved the right to do so at a later date, has reduced pressure on Congress to take action to comply with the WTO ruling.

## Offshore Oil and Natural Gas Development

The issue of Cuba's development of its deepwater offshore oil reserves in the Gulf of Mexico has been a concern among some Members of Congress. According to the U.S. Energy Information Administration, industry analysts maintain that there could be at least 1.6 billion barrels of crude oil reserves in Cuba's offshore sector; the U.S. Geological Survey estimated a mean of 4.6 billion

<sup>87</sup> "U.S., EU Agree on Deadline for Complying with Section 211 WTO Finding," *Inside U.S. Trade*, April 12, 2002.

<sup>88</sup> "Japan, EU Suspend WTO Retaliation Against U.S. in Two Cases," *Inside U.S. Trade*, July 15, 2005.

<sup>89</sup> "PTO Cancels Cuban 'Havana Club' Mark; Bacardi Set to Sell Rum Under Same Mark," *International Trade Daily*, August 10, 2006.

<sup>90</sup> Brian Lehman, testimony before the Senate Committee on the Judiciary, hearing on "An Examination of Section 211 of the Omnibus Appropriations Act of 1998," July 13, 2004.

<sup>91</sup> "USA-Engage Joins Cuba Fight," *Cuba Trader*, April 1, 2002.

barrels of undiscovered oil and 9.8 trillion cubic feet of undiscovered natural gas reserves.<sup>92</sup> In October 2008, an official of Cuba's state oil company, Cubapetróleo (Cupet), maintained there may be more than 20 billion barrels of oil in Cuba's deepwaters, but energy analysts expressed skepticism for such a claim.<sup>93</sup>

At present, Cuba has agreements in place for six concessions involving seven foreign oil companies for the exploration of offshore oil and gas. Repsol (Spain), Norsk-Hydro (Norway), and ONGC (India) are partners in a joint project, while ONGC, PdVSA (Venezuela), Petronas (Malaysia), PetroVietnam, and Petrobras (Brazil) have separate concessions. In addition, Cuba is in negotiation with the China National Petroleum Corporation (CNPC) and Angola's Sonangol for offshore leases.

Although there have been some claims that China is drilling in Cuba's offshore deepwater oil sector, to date its involvement in Cuba's oil sector has been focused on exploring onshore/close coastal oil extraction in Piñar del Rio province through its state-run China Petroleum and Chemical Corporation (Sinopec).<sup>94</sup> At this juncture, China does not have a concession in Cuba's offshore oil sector in the deepwaters of the Gulf of Mexico, although as noted above, CNPC is reportedly in negotiations for offshore leases.<sup>95</sup>

Some Members of Congress have expressed concern about oil development so close to the United States and about potential environmental damage to the Florida coast. The Repsol-led project had plans to drill a second well in August 2009 (the first was drilled in 2004), but this has been postponed and reportedly will take place in early 2011.<sup>96</sup>

With the Deepwater Horizon oil spill in the Gulf of Mexico, Cuba had concerns about potential damage from oil reaching its shore and reportedly has been preparing coastal residents who could be affected.<sup>97</sup> U.S. officials in Havana kept the Cuban government informed about the oil spill in working-level discussions. With Cuba's interest in developing its offshore oil resources so close to the United States, some analysts have called for U.S.-Cuban energy and environmental cooperation and planning to minimize potential damage from a future oil spill. In late May 2010, the Administration approved a license for a U.S. company to travel to Cuba to start cooperation on oil safety and environmental practices.<sup>98</sup> Some analysts have called for the Administration to proactively identify, and take action to amend or rescind as required, any regulatory restrictions or prohibitions on the transfer of U.S. equipment, technology, and personnel to Cuba that would be needed to combat an oil spill in Cuba.<sup>99</sup> Some have also called for more formal U.S.-Cuban

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<sup>92</sup> U.S. Energy Information Administration, "Country Analysis Briefs: Caribbean," October 2008; U.S. Geological Survey, "Assessment of Undiscovered Oil and Gas Resources of the North Cuban Basin, Cuba, 2004," Fact Sheet 2005-3009, February 2005.

<sup>93</sup> Jeff Franks, "Cuba Oil Claims Raise Eyebrows in Energy World," October 24, 2008; and Larry Luxner, "Cuba May have 20 Billion Barrels of Oil But Cash Crunch Threatens Investment," *CubaNews*, November 2008.

<sup>94</sup> Domingo Amuchastegui, "Cuban Again Invites U.S. Oil Giants to Invest in Oil Sector," *CubaNews*, May 2007.

<sup>95</sup> Lesley Clark and Erika Bolstad, "China-Cuba Rumors Fuel Renewed Offshore Drilling Debate, Rumors of China Drilling in Cuban Waters Are Rallying Support for Drilling off Florida's Coast, But Experts Say They're Untrue," *Miami Herald*, June 12, 2008.

<sup>96</sup> "Offshore Drilling; Cuban Oil Exploration Poses Risk to Florida Beaches," *Greenwire*, July 2, 2010.

<sup>97</sup> Andrea Rodriguez, "Cuban Military Official Says Gulf Oil Spill's Possible Arrival to Cuba Threatens 'Disaster,'" *AP Newswire*, June 15, 2010.

<sup>98</sup> "U.S. Steps Up Cuba Cooperation after Gulf Oil Spill," *Reuters News*, May 26, 2010.

<sup>99</sup> Jorge R. Piñon and Robert L. Muse, "Coping with the Next Oil Spill: Why U.S.-Cuba Environmental Cooperation is (continued...)"

government cooperation and planning to minimize potential damage from an oil spill. Similar U.S. cooperation with Mexico could be a potential model for U.S.-Cuban cooperation, while two multilateral agreements on oil spills under the auspices of the International Maritime Organization also could provide a mechanism for some U.S.-Cuban engagement on oil pollution preparedness and response.

In the 111<sup>th</sup> Congress, three measures were introduced that would have allowed for U.S. involvement in Cuba's offshore oil sector, while another measure would have imposed visa restrictions and sanctions on aliens who help facilitate the development of Cuba's petroleum resources. No action was taken on these measures. S. 774 (Dorgan), H.R. 1918 (Flake), and S. 1517 (Murkowski) would have authorized U.S. companies to work with Cuba for the exploration and extraction of oil, and to export without license all necessary equipment. The bills would have amended the Trade Sanctions Reform and Export Enhancement Act of 2000 to provide for a general license for travel by persons engaging in hydrocarbon exploration and extraction activities. H.R. 1918 would also have allowed for the importation of such hydrocarbon resources from Cuba. In contrast, H.R. 5620 (Ros-Lehtinen) would have amended the Cuban Liberty and Democratic Solidarity Act of 1996 to exclude from the United States aliens who invest \$1 million or more that contributes to the ability of Cuba to develop its offshore petroleum resources. The bill also would have provided for the imposition of sanctions and prohibition on the facilitation of development of Cuba's petroleum resources.

For additional information, see CRS Report R41522, *Cuba's Offshore Oil Development: Background and U.S. Policy Considerations*.

## **Drug Interdiction Cooperation**

Cuba is not a major producer or consumer of illicit drugs, but its numerous small keys, extensive shoreline, and geographic location make it susceptible to narcotics smuggling operations. Drugs that enter the Cuban market are largely the result of onshore wash-ups from smuggling by high-speed boats moving drugs from Jamaica to the Bahamas, Haiti, and the United States or by small aircraft from clandestine airfields in Jamaica. For a number of years, Cuban officials have expressed concerns over the use of their waters and airspace for drug transit and about 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. According to the State Department's March 2010 *International Narcotics Control Strategy Report (INCSR)*, Cuba maintains that it has some 56 judicial assistance agreements and two memoranda of understanding with other countries related to anti-drug cooperation. For a decade, Cuba's Operation Hatchet has focused on maritime and air interdiction and the recovery of narcotics washed up on Cuban shores. Since 2003, Cuba has aggressively pursued an internal enforcement and investigation program against its incipient drug market with an effective nationwide drug prevention and awareness campaign, Operation Popular Shield.

Over the years, there have been varying levels of U.S.-Cuban cooperation on anti-drug efforts. In 1996, Cuban authorities cooperated with the United States in the seizure of 6.6 tons of cocaine

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(...continued)

Critical," *U.S. Cuba Relations at Brookings*, Issue Brief No. 2, May 2010.

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.

In the March 2010 *INCSR*, the State Department reported that some of Cuba's anti-drug operations were undertaken in coordination with the U.S. Coast Guard DIS at the U.S. Interests Section in Havana. It maintained that Cuban authorities have provided the DIS continued access to Cuban counternarcotics efforts, including providing investigative criminal information, such as the names of suspects and vessels; debriefings on drug trafficking cases; visits to the Cuban national canine training center and antidoping laboratory in Havana; tours of Cuban Border Guard facilities and container x-ray equipment at the Port of Havana; and opportunities to meet with the chiefs of Cuba's INTERPOL and Customs offices.

Cuba maintains that it wants to cooperate with the United States to combat drug trafficking, and on various occasions has called for a bilateral anti-drug cooperation agreement with the United States.<sup>100</sup> In January 2002, Cuba deported to the United States Jesse James Bell, a U.S. fugitive wanted on drug charges, and in early March 2002, Cuba arrested a convicted Colombian drug trafficker, Rafael Bustamante, who escaped from jail in Alabama in 1992. At the time, then Drug Enforcement Administration head Asa Hutchison expressed appreciation for Cuba's actions, but indicated that cooperation would continue on a case-by-case basis, not through a bilateral agreement.<sup>101</sup> In February 2007, Cuba extradited drug trafficker Luis Hernando Gómez Bustamante to Colombia, an action that drew praise from U.S. Assistant Secretary of State for International Narcotics and Law Enforcement Affairs Anne Patterson.<sup>102</sup> Gómez Bustamante was subsequently extradited to the United States in July 2007 to face drug trafficking charges.

In April 2008, John Walters, Director of the White House Office of National Drug Control Policy, lauded U.S. anti-drug cooperation with Cuba as a good example of how cooperation has been achieved despite overall political differences between the two countries.<sup>103</sup>

In early January 2009, then Assistant Secretary of State for Western Hemisphere Affairs Tom Shannon maintained in an interview with Spain's *El País* newspaper that a drug trafficking accord

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<sup>100</sup> On March 12, 2002, Cuba's Ministry of Foreign Affairs and the Cuban Interests Section in Washington delivered three diplomatic notes to the U.S. Interests Section in Havana and the State Department in Washington proposing agreements on drug interdiction, terrorism, and migration issues. See "Statement from the Ministry of Foreign Affairs: Prominent Drug Trafficker Arrested in our Country," Information Office, Cuban Interests Section, March 17, 2002; "Cuba Offers to Sign Anti-Drug Pact," *Miami Herald*, April 8, 2006.

<sup>101</sup> Anthony Boadle, "U.S. Thanks Cuba, But Declines Anti-Drug Accord," Reuters, March 19, 2002.

<sup>102</sup> U.S. Department of State, Release of the 2007 International Narcotics Control Strategy Report, Anne W. Patterson, Assistant Secretary of State for International Narcotics and Law Enforcement Affairs, On-The-Record Briefing, March 1, 2007.

<sup>103</sup> "White House Office of National Drug Control Policy Director Waters Holds News Briefing on Emerging Transatlantic Drug Threats at the Foreign Press Center," *Newsmakers Transcripts*, *CQ.com*, April 28, 2008.

with Cuba would be logical, although he could not anticipate what the next Administration would do.<sup>104</sup>

In its March 2010 *INCSR*, the State Department stated that “both nations may gain by pressing forward with expanded cooperation, especially considering Cuba’s location in the Caribbean, and the potential for the island and its territorial seas to be utilized for drug transshipments to the United States.”

## **Legislative Initiatives**

Over the past several years, House and Senate versions of Foreign Operations appropriations bills have contained contrasting provisions related to funding for cooperation with Cuba on counternarcotics efforts. House bills have generally prohibited funds for such efforts, while Senate versions would have funded such efforts. Ultimately, none of these provisions were included in enacted measures.

In the second session of the 110<sup>th</sup> Congress, the Senate Appropriations Committee version of the FY2009 State, Department, Foreign Operations, and Related Agencies Appropriations Act, S. 3288, contained a provision (section 779) that would have provided for \$1 million for preliminary work by the Department of State, or other entity designated by the Secretary of State, to establish cooperation with appropriate Cuban agencies on counternarcotics matters. No action was taken on the measure, and no such provision was ultimately included in the FY2009 Omnibus Appropriations Act, (P.L. 111-8) in the 111<sup>th</sup> Congress.

For FY2010, the Senate Appropriations Committee-reported version of S. 1434, the State Department, Foreign Operations and Related Programs Appropriations Act, 2010, contained a provision in section 7092 that would have provided \$1 million in International Narcotics Control and Law Enforcement (INCLE) assistance for preliminary work by the State Department or other entity designated by the Secretary of State to establish cooperation with appropriate agencies of the government of Cuba on counternarcotics matters, including matters relating to cooperation, coordination, and mutual assistance in the interdiction of illicit drugs being transported through Cuban airspace or over Cuba waters. The amount would not have been available if the Secretary of State 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 that there was credible evidence of involvement of the government of Cuba in drug trafficking during the preceding 10 years. The House-passed version of the appropriations measure, H.R. 3081, did not have a similar provision, and ultimately the final enacted FY2010 omnibus appropriations measure (P.L. 111-117) did not include the Senate committee provision.

## **Cuban Spies in the United States**

Over the past decade, a number of individuals, including three U.S. government officials, have been convicted in the United States on charges involving spying for Cuba. Most recently in June 2009, the FBI arrested a retired State Department employee and his wife, Walter Kendall Myers and Gwendolyn Steingraber Myers, for spying for Cuba for three decades. The two were accused

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<sup>104</sup> José Manuel Calvo, “Thomas Shannon Secretario de Estado adjunto para Latinoamérica: “Sería un acuerdo contra el narcotráfico entre Cuba y EE UU,” *El País*, January 11, 2009.

of acting as agents of the Cuban government and of passing classified information to the Cuban government. In November 2009, the Myerses pled guilty to the spying charges, and in July 2010 Kendall Myers was sentenced to life in prison while Gwendolyn Myers was sentenced to 81 months.<sup>105</sup>

In 2006, Florida International University (FIU) professor Carlos Alvarez pled guilty to conspiring to be an unregistered agent who has informed on the Cuban exile community, while his wife Elsa Prieto Alvarez, an FIU counselor, pled guilty to being aware of and failing to disclose her husband's activities. Carlos Alvarez received a five-year sentence, while his wife received three years.

In May 2003, the Bush Administration ordered the expulsion of 14 Cuban diplomats (seven from New York and seven from Washington, DC), maintaining that they were involved in monitoring and surveillance activities.

On September 21, 2001, Defense Intelligence Agency (DIA) analyst Ana Montes was arrested on charges of spying for the Cuban government. Montes reportedly supplied Cuba with classified information about U.S. military exercises and other sensitive operations.<sup>106</sup> Montes ultimately pled guilty to spying for the Cuban government for 16 years, during which she divulged the names of four U.S. government intelligence agents working in Cuba and information about a "special access program" related to U.S. national defense. She was sentenced in October 2002 to 25 years in prison in exchange for her cooperation with prosecutors as part of a plea bargain. In response to the espionage case, the State Department ordered the expulsion of four Cuban diplomats (two from Cuba's U.N. Mission in New York and two from the Cuban Interests Section in Washington, DC) in November 2002.

In June 2001, five members of the so-called "Wasp Network" who were originally arrested in September 1998 were convicted on espionage charges by a U.S. Federal Court in Miami. Sentences handed down for the so-called "Cuban five" in December 2001 ranged from 15 years to life in prison for three of the five. (In addition to the five, a married couple in the so-called "Wasp Network" was sentenced in January 2002 to prison terms of seven years and three and one-half years for their participation in the spy network.) The group of five Cuban intelligence agents penetrated Cuban exile groups and targeted U.S. military bases. The Cuban government vowed to work for the return of the "Cuban five" who have been dubbed "Heroes of the Republic" by Cuba's National Assembly. In December 2008, Cuban President Raúl Castro offered to exchange some imprisoned Cuban political dissidents for the "Cuban five," an offer that was rejected by the State Department, which maintained that the dissidents should be released immediately without any conditions.<sup>107</sup> On June 15, 2009, the U.S. Supreme Court chose not to hear an appeal of the case of the "Cuban five" in which their lawyers were asking for a new trial outside Miami before an unbiased jury. However, in 2009, sentences for three of the five were reduced; in October, one defendant with a life sentence had his sentence reduced to 20

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<sup>105</sup> Del Quentin Wilber, "Former U.S. Official, Wife Admit to 30 Years of Spying for Cuba," *Washington Post*, November 21, 2009; and Spencer S. Hsu, "Man Who Spied for Cuba Gets Life," *Washington Post*, July 18, 2010.

<sup>106</sup> Bill Miller and Walter Pincus, "Defense Analyst Accused of Spying for Cuba," Woman Passed Classified Information on Military Exercises, FBI Says," *Washington Post*, September 22, 2001.

<sup>107</sup> Marco Sibaja, "Raul Castro Offers To Free Dissidents in Exchange for Alleged Cuban Spies Jailed in U.S.," *Associated Press Newswires*, December 18, 2008.

years, while in December a second defendant facing a life sentence had his sentenced reduced to 30 years and another facing 19 years had his sentence slightly reduced sentence to 18 years.<sup>108</sup>

In February 2000, an Immigration and Naturalization Service (INS) official from Miami, Mariano Faget, was arrested and ultimately convicted in May 2000 for passing classified information to a friend with ties to Cuba. He was sentenced to five years in prison in June 2001. The case led to the State Department's expulsion of a Cuban diplomat working in Washington, DC.

## **Cuba and Terrorism<sup>109</sup>**

Cuba was added to the State Department's list of states sponsoring international terrorism in 1982 (pursuant to section 6(j) of the Export Administration Act of 1979) because of its alleged ties to international terrorism and support for terrorist groups in Latin America, and has remained on the list since that time. 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 due to 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.

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. 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.

The State Department's *Country Reports on Terrorism 2009* report (issued August 5, 2010) maintained that the Cuban government and its official media publicly condemned acts of terrorism by al-Qa'ida and its affiliates, but at the same time remained critical of the U.S. approach to combating international terrorism. The report noted that while Cuba no longer supports armed struggle in Latin America or elsewhere, that it continued to provide physical safe haven and ideological support to members of three terrorist organizations—Basque Homeland and Freedom (ETA), the Revolutionary Armed Forces of Colombia (FARC), and Colombia's National Liberation Army (ELN). The report noted that Cuba cooperated with the United States on a limited number of law enforcement matters, but also pointed out that the Cuban government continued to permit U.S. fugitives to live legally in Cuba, including convicted murders and hijackers.

Both the President and Congress have powers to take a country off the state sponsors of terrorism list. As set forth in Section 6(j) of the Export Administration Act, a country's retention on the list may be rescinded in two ways. The first option is for the President to submit a report to Congress certifying that there has been a fundamental change in the leadership and policies of the government and that the government is not supporting acts of international terrorism and is

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<sup>108</sup> Ian Urbina, "Judge Reduces Sentence for One of Cuban Five," *New York Times*, October 14, 2009; and Jay Weaver, "Cuban Spy's Life Sentence Reduced to 30 Years," *Miami Herald*, December 9, 2009.

<sup>109</sup> For further information, see CRS Report RL32251, *Cuba and the State Sponsors of Terrorism List*, by Mark P. Sullivan.

providing assurances that it will not support such acts in the future. The second option is for the President to submit a report to Congress, at least 45 days in advance justifying the rescission and certifying that the government has not provided any support for international terrorism during the preceding six-months, and has provided assurances that it will not support such acts in the future. If Congress disagrees with the President's decision to remove a country from the list, it could seek to block the rescission through legislation.

Congress also has the power on its own to remove a country from the terrorism list. For example, legislation introduced on Cuba in the 111<sup>th</sup> Congress, H.R. 2272 (Rush), includes a provision that would rescind the Secretary of State's determination that Cuba "has repeatedly provided support for acts of international terrorism."

Cuban officials have criticized the United States for including Cuba on its list of countries requiring extra screening for Cuban citizens flying into the United States, an action taken by the Obama Administration on January 4, 2010, in the aftermath of the attempted bombing of a U.S. flight from Amsterdam on Christmas Day. Cuba was included on the extra screening list because of its retention on the State Department's state sponsors of terrorism list. Cuban officials maintain that the Cuba's inclusion on the terrorism list is unfounded, and that Cuba has never been used to organize, finance, or execute terrorist acts against the United States.<sup>110</sup>

### **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 for plans to conduct bombings in 1998. 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 also allegedly involved in the 1976 Cuban airline bombing noted above.<sup>111</sup> 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 reportedly traveled to another country.

On April 13, 2005, Posada's lawyer said that his client, reportedly in the United States after entering the country illegally, would seek asylum in the United States because he has a "well-founded fear of persecution" for his opposition to Fidel Castro.<sup>112</sup> Posada, a Venezuelan citizen, had been imprisoned in Venezuela for the bombing of the Cuban airliner in 1976, but reportedly

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<sup>110</sup> "Cuba Rejects Inclusion on U.S. Terrorism Black List," *EFE News Service*, January 5, 2010; and Paul Haven, "AP Interview: Cuba Summons Top U.S. Diplomat to Protest Extra Screening for Air Travelers," *AP Newswire*, January 6, 2010.

<sup>111</sup> Frances Robles, "An Old Foe of Castro Looks Back on His Fight," *Miami Herald*, September 4, 2003.

<sup>112</sup> Alfonso Chardy and Nancy San Martin, "Lawyer Expects Posada to Show Soon," *Miami Herald*, April 14, 2005.

was allowed to “escape” from prison in 1985 after his supporters paid a bribe to the prison warden.<sup>113</sup> He had been acquitted for the bombing but remained in prison pending a prosecutorial appeal.<sup>114</sup> Posada also reportedly admitted, but later denied, involvement in the string of bombings in Havana in 1997, one of which killed an Italian tourist.<sup>115</sup> Posada subsequently withdrew his application for asylum on May 17, 2005. Later that day, U.S. Immigration and Customs Enforcement (ICE) arrested Posada, 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.<sup>116</sup> Venezuela requested Posada’s extradition and pledged that it would not hand Posada over to Cuba. On September 26, 2005, however, a U.S. immigration judge ruled that Posada likely faced torture in Venezuela and could not be deported in keeping with U.S. obligations under the Convention Against Torture.<sup>117</sup>

ICE reviewed the case and determined on March 22, 2006, that Posada would not be freed from a federal immigration facility in El Paso, TX.<sup>118</sup> In November 2006, however, a U.S. federal judge, who was considering Posada’s plea that he be released, ordered the government to supply evidence, by February 1, 2007, justifying his continued detention. On January 11, 2007, a federal grand jury in Texas indicted Posada on seven counts for lying about how he entered the United States illegally in March 2005, whereupon he was transferred from immigration detention in El Paso to a county prison in New Mexico near the Texas border. The Cuban government responded by maintaining that Posada needs to be charged with terrorism, not just lying about how he entered the United States.

Posada was released from jail in New Mexico on April 19, 2007, and allowed to return to Miami under house arrest to await an upcoming trial on immigration fraud charges, but on May 9, 2007, a federal judge in Texas dismissed the charges. The judge maintained that the U.S. government mistranslated testimony from Posada and manipulated evidence.<sup>119</sup> Both Cuba and Venezuela strongly denounced Posada’s release, contending that he is a terrorist.

In a new turn of events, Posada was again indicted by a federal grand jury in Texas on April 8, 2009. In the 11-count indictment, Posada was accused, among other things, of lying during immigration proceedings regarding his involvement in bombings in Havana in 1997. Originally a federal trial was set to begin in August 2009, but has been rescheduled three times and is now scheduled to take place in January 2011.<sup>120</sup>

On July 7, 2010, Venezuelan authorities extradited to Cuba an alleged Posada associate, Salvadoran citizen Francisco Chávez Abarca, who is charged with involvement in one of the 1997

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<sup>113</sup> Ann Louise Bardach, “Our Man’s in Miami. Patriot or Terrorist?,” *Washington Post*, April 17, 2005.

<sup>114</sup> Although 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.

<sup>115</sup> Oscar Corral and Alfonso Chardy, “Victim’s Kin Oppose Posada Bid for Asylum,” *Miami Herald*, May 7, 2005.

<sup>116</sup> Department of Homeland Security, Office of Public Affairs, Statement, May 17, 2005.

<sup>117</sup> Alicia Caldwell, “Judge Says Cuban Militant Can’t Be Deported to Venezuela,” *Associated Press*, September 28, 2005.

<sup>118</sup> Oscar Corral, “Cuban Exile Militant Luis Posada Denied Release,” *Miami Herald*, March 22, 2006.

<sup>119</sup> Carol J. Williams, “Pressure Grows to Prosecute Cuban Exile,” *Los Angeles Times*, May 10, 2007.

<sup>120</sup> “Cuban Militant’s Trial Set for Jan. 11,” *San Angelo Standard-Times*, June 5, 2010.

bombings in Havana.<sup>121</sup> Chávez Abarca had been imprisoned from 2005-2007 in El Salvador for running a car theft ring, but charges ultimately were dropped, reportedly because of a botched investigation, and he was set free. On July 1, 2010, he was arrested in Venezuela upon entering the country and allegedly confessed to plans to organize protests in Venezuela around the time of the country's legislative elections in September 2010.<sup>122</sup> In late September 2010, the Cuban government released Chávez Abarca's video confessions and reenactment of the bombings, as well as his alleged association with Luis Posada, in a public information campaign featured in the Cuban media as well as abroad on social media sites such as YouTube and Facebook.<sup>123</sup> According to Chávez Abarca, Posada recruited him in El Salvador for the Cuba bombings, and paid him \$2,000 for each bomb that went off. Only one of the bombs that Chávez Abarca planted actually detonated – on April 12, 2007 in the bathroom of a disco at the Melia Cohiba hotel in Havana.

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

Since 1996, the United States has provided assistance—primarily through the U.S. Agency for International Development (USAID), but also through the State Department and the National Endowment for Democracy (NED)—to increase the flow of information on democracy, human rights, and free enterprise to Cuba.

USAID's Cuba program has supported a variety of U.S.-based non-governmental organizations with the goals of promoting a rapid, peaceful transition to democracy, helping develop civil society, and building solidarity with Cuba's human rights activists.<sup>124</sup> These efforts are largely funded through Economic Support Funds (ESF) in the annual foreign operations appropriations bill. From FY2001-FY2010, Congress appropriated almost \$157 million in funding for Cuba democracy efforts. This included \$45.3 million for FY2008, \$20 million for FY2009, and \$20 million for FY2010.

For FY2009, Congress fully funded the Administration's \$20 million request in ESF to continue to implement the program recommendations of the Commission for Assistance to a Free Cuba. According to the request, the funding was aimed at assisting human rights activists, independent journalists, Afro-Cubans, and women, youth, and student activists. The report to the Senate Appropriations Committee version of the FY2009 State Department, Foreign Operations, and Related Agencies Appropriations Act, S. 3288 (S.Rept. 110-425), recommended fully funding the Administration's request for Cuba, but also called for the State Department and USAID to conduct regular evaluations to ensure the cost effectiveness of the programs. No final action on the appropriations measure was taken in the 110<sup>th</sup> Congress, but in the 111<sup>th</sup> Congress, the FY2009 Omnibus Appropriations Act (P.L. 111-8) funded overall foreign operations funding, including the \$20 million for Cuba democracy funding. Two members of Congress placed a hold on the assistance until the Administration provided more information on the proposed funding, but in early June 2010, the hold was lifted and \$15 million of the \$20 million was released.<sup>125</sup>

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<sup>121</sup> Christopher Toothaker, "Venezuela Extradites Suspected Terrorist to Cuba to Face Bombing Charges," *AP Newswire*, July 7, 2010.

<sup>122</sup> Frances Robles, "Mystery Man in Terror Plots Points at Miami Exiles," *Miami Herald*, October 18, 2010.

<sup>123</sup> The Cuban government's video series, entitled Path to Terror, is available on YouTube at: <http://www.youtube.com/watch?v=kx7TptU3taQ>.

<sup>124</sup> See USAID's Cuba program website: [http://www.usaid.gov/locations/latin\\_america\\_caribbean/country/cuba/](http://www.usaid.gov/locations/latin_america_caribbean/country/cuba/).

<sup>125</sup> Juan O. Tamayo, "U.S. Funds for Democracy Programs in Cuba Get Green Light," *Miami Herald*, June 8, 2010; (continued...)

Subsequently in August 2010, USAID notified Congress that it would be obligating \$620,000 more in FY2009 ESF for Cuba, bringing total FY2009 Cuba funding to \$15.620 million. At the same time, the USAID shifted the remaining \$4.380 million originally notified for Cuba to a humanitarian assistance program for Guatemala.

For FY2010, Congress once again fully funded the Administration's \$20 million ESF request for Cuba democracy programs in the conference report (H.Rept. 111-366) to the Consolidated Appropriations Act, 2010 (H.R. 3288/P.L. 111-117). According to the State Department's *FY2010 Congressional Budget Justification for Foreign Operations*, U.S. assistance programs focus on providing humanitarian assistance to victims of repression, strengthening civil society, weakening the information blockade, and helping Cubans to create space for dialogue about democratic change and reconciliation. Both House-passed H.R. 3081 and Senate Appropriations Committee-reported S. 1434, the FY2010 State Department, Foreign Operations, and Related Programs Appropriations Act, recommended full funding of the Administration's \$20 million request.

For FY2011, the Administration once again requested \$20 million in ESF to support democracy and human rights projects. According to the Administration's request, the assistance would focus on providing humanitarian assistance to prisoners of conscience and their families, strengthening civil society, supporting issue-based civic action movements and coalitions, and promoting fundamental freedoms, especially freedom of expression and freedom of the press. The Senate version of the State Department and Foreign Operations appropriations measure, S. 3676, reported by the Senate Appropriations Committee on July 29, 2010 (S.Rept. 111-237), provided that \$2 million of the ESF appropriated for Cuba be transferred and merged with funds for the National Endowment for Democracy for democracy programs in Cuba. The 111<sup>th</sup> Congress did not complete action on the FY2011 State Department and Foreign Operations appropriations measure. Instead, it approved a series of short-term continuing resolutions (P.L. 111-242, as amended), the last of which provided funding for federal agencies through March 4, 2011, generally at FY2010 levels and under conditions provided in enacted FY2010 appropriations measures.

Until FY2008, NED's democratization assistance for Cuba had been funded largely through the annual Commerce, Justice, and State (CJS) appropriations measure, but is now funded through the State Department, Foreign Operations and Related Agencies appropriations measure. NED funding for Cuba has steadily increased over the past several years: \$765,000 in FY2001; \$841,000 in FY2002; \$1.14 million in FY2003; and \$1.15 million in FY2004. For FY2005, NED funded 17 Cuba projects with \$2.4 million. For FY2006, NED funded 13 projects with almost \$1.5 million, including \$0.4 million from State Department ESF. For FY2007, NED funded 12 projects with almost \$1.5 million, which included almost \$1.4 million funded by the State Department. For FY2008, NED funded 11 projects with over \$1.4 million. In FY2009, NED funded 10 Cuba projects with about \$1.5 million from the State Department.

## **Oversight of U.S. Democracy Assistance to Cuba**

In November 2006, the Government Accountability Office (GAO) issued a report examining U.S. democracy assistance for Cuba from 1996-2005, and concluded that the U.S. program had

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(...continued)

Ana Radelat, "Lawmakers Pressure State Department to 'Decontaminate' USAID Cuba Program," *CubaNews*, June 2010.

significant problems and needed better management and oversight. According to GAO, internal controls, for both the awarding of Cuba program grants and oversight of grantees, “do not provide adequate assurance that the funds are being used properly and that grantees are in compliance with applicable law and regulations.”<sup>126</sup> Investigative news reports on the program maintained that high shipping costs and lax oversight have diminished its effectiveness.<sup>127</sup> Representative William Delahunt, chairman of the House Foreign Affairs Committee’s Subcommittee on International Organizations, Human Rights, and Oversight, had requested the GAO study along with Representative Jeff Flake.

In March 2008, a White House aide to President Bush, Felipe Sixto, resigned because of alleged misuse of funds when he worked for the Center for a Free Cuba, which has been a major recipient of U.S. democracy funding.<sup>128</sup> On December 19, 2008, Sixto pled guilty to stealing nearly \$600,000, and was sentenced to two and one-half years in prison in March 2009.<sup>129</sup> Another group, *Grupo de Apoyo a la Democracia* (Group in Support of Democracy), has also been under investigation by USAID for misuse of funds. Historically these two groups have been the two largest recipients of U.S. democracy funding for Cuba.<sup>130</sup>

GAO issued a second report examining USAID’s Cuba democracy program on November 24, 2008.<sup>131</sup> The report lauded the steps that USAID had taken since 2006 to address problems with its Cuba program and improve oversight of the assistance. These included awarding all grants competitively since 2006, hiring more staff for the program office since January 2008, and contracting for financial services in April 2008 to enhance oversight of grantees. The GAO report also noted that USAID had worked to strengthen program oversight through pre-award and follow-up reviews, improving grantee internal controls and implementation plans, and providing guidance and monitoring about permitted types of assistance and cost sharing.

The GAO report also maintained, however, that USAID had not staffed the Cuba program to the level needed for effective grant oversight. GAO also noted the difficulty of assessing USAID’s action to improve its Cuba program because most of its actions to improve the program were only taken recently. Procurement reviews completed in August 2008 by the new financial services contractor identified internal control, financial management, and procurement weaknesses at three grantees. GAO recommended that USAID (1) ensure that its Cuba program office is staffed at the level that is needed to fully implement planned monitoring activities; and (2) periodically assess the Cuba program’s overall efforts to address and reduce grantee risks, especially regarding internal controls, procurement practices, expenditures, and compliance with laws and regulations.

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<sup>126</sup> U.S. Government Accountability Office, U.S. Democracy Assistance for Cuba Needs Better Management and Oversight, GAO-07-147, November 2006.

<sup>127</sup> Oscar Corral, “Federal Program to Help Democracy in Cuba Falls Short of Mark,” *Miami Herald*, November 14, 2006, and “Is U.S. Aid Reaching Castro Foes?” *Miami Herald*, November 15, 2006.

<sup>128</sup> Alfonso Chardy and Pablo Bachelet, “Cuban Exile Activist Felt ‘Betrayal’ by Employees,” *Miami Herald*, April 24, 2008; William Gibson, “Ex-Bush Aide Imprisoned for Stealing Cuba Democracy Funds,” *South Florida Sun-Sentinel*, March 18, 2009.

<sup>129</sup> Jesse J. Holland, “Former Bush Aide Pleads Guilty to Stealing from Anti-Castro Cuban Democracy Advocates,” *Associated Press Newswires*, December 19, 2008.

<sup>130</sup> Frances Robles, “Hold on Funds for Cuba Democracy Project Lifted,” *Miami Herald*, July 23, 2008.

<sup>131</sup> U.S. Government Accountability Office, *Foreign Assistance: Continued Efforts Needed to Strengthen USAID’s Oversight of U.S. Democracy Assistance for Cuba*, GAO-09-165, November 2008.

The Cuban American National Foundation (CANF) released a report in May 2008 maintaining that a majority of the assistance for Cuba has been spent in operating expenses by U.S.-based grantees, transition studies, and U.S.-based activities. Among the recommendations in its report, the CANF called for USAID grantees to spend a minimum of 75% of government funds in direct aid to Cuban civil society. It also called for the assistance program to provide direct cash aid to independent civil society groups, dissidents, and families of political prisoners.<sup>132</sup>

## December 2009 Detainment of American Subcontractor

On December 4, 2009, Cuban authorities arrested an American subcontractor, Alan Gross, working for Development Alternatives Inc. (DAI), a Bethesda-based company that had received a contract from USAID to help support Cuban civil society organizations. Gross was arrested at Jose Martí International Airport in Havana when he was planning to leave the country. Gross's identity had not been made public until January 13, 2010, when various press reports cited his name. He reportedly was distributing communications equipment in Cuba such as cell phones and laptop computers to Jewish organizations in Cuba.<sup>133</sup>

High-ranking Cuban official Ricardo Alarcon, the head of Cuba's National Assembly, asserted on January 6, 2010, that the contractor was working for American intelligence, but U.S. officials strongly denied the accusation.<sup>134</sup> A State Department spokesman maintained that the contractor "is not associated with our intelligence services" and noted that "Cuba has a history of mischaracterizing what Americans and NGOs in Cuba are doing."<sup>135</sup> According to a statement by DAI, "the detained subcontractor was not working for any intelligence service ... he was working with a peaceful, non-dissident civic group—a religious and cultural group recognized by the Cuban government—to improve its ability to communicate with its members across the island and overseas."<sup>136</sup>

Numerous U.S. officials have raised the issue of Alan Gross's release. At the semi-annual migration talks with Cuba in February and June 2010, U.S. officials raised the issue and called for his release. Some 40 House Members called for Mr. Gross's release in a letter to the Cuban government, warning that improved relations between the United States and Cuba will not be possible until he is released.<sup>137</sup> The letter maintained that Mr. Gross's work in Cuba with the Jewish community "emanated from his desire to make a positive impact for others of faith on the island." It expressed concern for Mr. Gross's health and the deteriorating health of his elderly

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<sup>132</sup> Alfonso Chardy, "Exile Group: Not Enough Money Getting to Cuban Dissidents," *Miami Herald*, May 15, 2008; Cuban American National Foundation, "Findings and Recommendations on the Most Effective Use of USAID-CUBA Funds Authorized by Section 109(a) of the Cuban Liberty and Democratic Solidarity (Helms-Burton) Act of 1996," March 2008.

<sup>133</sup> William Booth and Mary Beth Sheridan, "Cuba Detains Contractor for U.S. Government; American Was Handing Out Mobile Phones, Laptops to Activists," *Washington Post*, December 12, 2009; Ginger Thompson and Marc Lacey, "Contractor Jailed in Cuba Was Aiding Religious Groups," *New York Times*, January 13, 2010; and Mary Beth Sheridan and William Booth, "U.S. Detainee Was Aiding Jewish Groups in Cuba," *Washington Post*, January 13, 2010.

<sup>134</sup> William Booth, "Contractor is U.S. Secret Agent, Cuban Legislator Says," *Washington Post*, January 7, 2010.

<sup>135</sup> "State Department Holds Regular News Briefing," *CQ Newsmaker Transcripts*, January 7, 2010.

<sup>136</sup> Frances Robles, "U.S. Says Contractor Arrested in Cuba is No Spy," *Miami Herald*, January 8, 2010; and Development Alternatives Inc. "Updated Statement from DAI President and CEO Dr. James Boomgard Regarding Detainee in Cuba," January 7, 2010.

<sup>137</sup> "Congressmen urge Cuba to Release Jailed U.S. Aid Worker Who Helped Jewish Community," *States News Service*, March 24, 2010.

mother. A number of other Members and Senators have also called for Mr. Gross's immediate release. On June 17, 2010, Secretary of State Clinton met with family members of Mr. Gross, and issued a statement expressing deep concern about his welfare and poor health. The Secretary maintained that his continued detention "is harming U.S.-Cuba relations," and that his release would be viewed favorably.<sup>138</sup> In September 2010, at the time of the U.N. General Assembly meeting, Assistant Secretary of State for Western Hemisphere Affairs met with Cuban Foreign Minister Bruno Rodriguez in New York to encourage the release of Mr. Gross.<sup>139</sup> As noted above, in early December 2010, on the one-year anniversary of Mr. Gross's detention, the State Department again issued a statement calling for his release, and maintaining that "the continued detention of Alan Gross is a major impediment to advancing the dialogue between our two countries."<sup>140</sup>

## Radio and TV Marti

U.S.-government sponsored radio and television broadcasting to Cuba—Radio and TV Martí—began in 1985 and 1990 respectively. According to the *Broadcasting Board of Governors FY2011 Budget Request*, Radio and TV Martí are dedicated to providing a reliable source of news and information that is accurate, objective, and credible. The request maintains that the two programs support the right of the Cuban people to seek, receive, and impart information and ideas through any media, regardless of frontiers.

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 (BBG) 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 Martí. OCB is headquartered in Miami, FL, and operates under the BBG's International Broadcasting Bureau (IBB). Legislation in the 104<sup>th</sup> Congress (P.L. 104-134) required the relocation of OCB from Washington, DC, to south Florida. The move began in 1996 and was completed in 1998.

Radio Martí broadcasts on short and medium wave (AM) channels for 24 hours six days per week, and for 18 hours one day per week utilizing transmission facilities in Marathon, FL, and Greenville, NC, according to the BBG. It also transmits to Cuba 24 hours daily through Hispasat satellite television and the internet.

TV Martí programming has been broadcast through multiple transmission methods over the years. From its beginning in 1990 until July 2005, it was broadcast via an aerostat (blimp) from facilities in Cudjoe Key, Florida for four and one-half hours daily, but the aerostat was destroyed by Hurricane Dennis. Currently TV Martí is broadcast via the internet, satellite television—Hispasat and DirecTV, and by an airborne platform—AeroMartí.

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<sup>138</sup> U.S. Department of State, Secretary of State Hillary Rodham Clinton, "Continued Incarceration of Alan Gross," June 17, 2010.

<sup>139</sup> U.S. Department of State, Daily Press Briefing, October 18, 2010; and Juan O. Tamayo, "Cuba, U.S. Talk on Jailed American," *Miami Herald*, October 19, 2010.

<sup>140</sup> U.S. Department of State, "One Year Continued Incarceration of Alan Gross," Philip J. Crowley, Assistant Secretary Bureau of Public Affairs, December 3, 2010.

In December 2006, the OCB contracted with two private U.S. commercial stations to transmit Radio and TV Martí.<sup>141</sup> It provided a six-month contract with Radio Mambí (710 AM) in Florida, at a cost of \$182,500, to broadcast one hour of Radio Martí programming five days a week from midnight to 1:00 am. Radio Mambí is a popular station in south Florida, with a 50,000 watt capacity, that is well-known for its strong anti-Castro stance. A second six-month OCB contract with WPMF (Channel 38) in Miami, known as TV Azteca, at a cost of \$195,000, provided for two 30-minute TV Martí newscasts at 6 pm and 11:30 pm weekdays, along with one-minute news updates hourly over a 12 hour period weekdays. OCB chose the station because it is offered on DirecTV and because it has only a small audience in Miami. In June 2007, the two contracts were extended for an additional six months with similar terms. The contract with Radio Mambí subsequently expired in early 2008, whereas TV Martí continues to be shown on Channel 38.

From mid-2004 until 2006, TV Martí programming was transmitted for several hours once a week via an airborne platform known as Commando Solo operated by the Department of Defense utilizing a C-130 aircraft. In August 2006, OCB began to use contracted private aircraft to transmit pre-recorded TV Martí broadcasts six days weekly, and by late October 2006 the OCB inaugurated an aircraft-broadcasting platform known as AeroMartí with the capability of transmitting live broadcasts. OCB uses two privately contracted airplanes for AeroMartí to transmit broadcasts four and one-half hours daily from Monday to Saturday during the evening. In June 2010, according to the BBG's FY2011 budget request, this was cut to two and one-half hours for five days weekly,

## Controversies

Both Radio and TV Martí 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 Martí, which has not had much of an audience because of Cuban jamming efforts. In December 2006, press reports alleged significant problems in the OCB's operations, with claims of cronyism, patronage, and bias in its coverage.<sup>142</sup> In February 2007, the former director of TV Martí programming pled guilty in U.S. federal court to receiving more than \$100,000 in kickbacks over a three-year period from a vendor receiving OCB contracts.<sup>143</sup>

Over the years, there have been various government studies and audits of the OCB, including investigations by the GAO, by a 1994 congressionally-established Advisory Panel on Radio and TV Martí, by the State Department Office Inspector General (OIG) in 1999, and by the combined State Department/BBG Office Inspector General in 2003 and 2007.<sup>144</sup> In July 2008, GAO issued a

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<sup>141</sup> Christina Hoag, "Radio, TV Martí To Be Aired Locally," *Miami Herald*, December 19, 2006.

<sup>142</sup> Oscar Corral, "Radio, TV Martí Face Another Government Audit," *Miami Herald*, December 18, 2006, and "Problems Dog Broadcaster," *Miami Herald*, December 19, 2006.

<sup>143</sup> Jay Weaver, "TV Martí Executive Admits Taking Kickbacks," *Miami Herald*, February 14, 2007.

<sup>144</sup> See the following reports and audits: U.S. General Accounting Office (GAO), *Broadcasts to Cuba, TV Martí Surveys are Flawed*, GAO/NSIAD-90-252, August 1990; U.S. GAO, *TV Martí, 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 Martí broadcast standards, GAO/NSIAD-93-126R, February 17, 1993; Advisory Panel on Radio and TV Martí, *Report of the Advisory Panel on Radio and TV Martí*, Three Volumes, March 1994; U.S. GAO, *Radio Martí, 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; U.S. Department of State, Office of the Inspector General, *Review of* (continued...)

report that criticized the IBB's and OCB's practices in awarding the two contracts to Radio Mambí and TV Azteca as lacking discipline required to ensure transparency and accountability. According to GAO, the approach for awarding the Radio Mambí and TV Azteca contracts did not reflect sound business practices.<sup>145</sup>

The most recent State Department/BBG Office of Inspector General (OIG) report, issued in June 2007, maintained that OCB had significantly improved its operations under its then-director, Pedro Roig, with an organizational realignment that streamlined operations and helped improve the quality of broadcasts. According to the report, "IBB quality reviews show that radio and television broadcasts have markedly improved over the past two years in production quality and content," although the report also called for greater emphasis on internal quality control to ensure that editorial standards are followed. The report lauded the introduction of new technology allowing OCB to broadcast television signals live into Cuba using airborne platforms, and maintained that there are indications that more Cubans are watching TV Martí broadcasts. It recommended that the BBG's International Broadcasting Bureau should review and assess the leases with Radio Mambí and TV Azteca at the end of the lease period to determine whether they provide additional listeners and viewers and are worth the cost, or whether they could be replaced with lease options for other stations. Looking ahead, the report maintained that OCB needs a "long-term strategic plan that anticipates the future needs of the Cuban audience, provides a template on how to compete with commercial broadcasters, and addresses what to do with OCB and its broadcasting facilities if and when uncensored broadcasting is allowed inside a democratic Cuba."<sup>146</sup>

One of the most controversial aspects of the OIG report, and one that has often been at the center of past congressional debate over TV Martí, is the extent to which TV Martí can be viewed in Cuba. The report maintained that there was anecdotal evidence that the AeroMartí airborne transmissions had increased viewership. The report referred to a January 2007 survey of Cuban arrivals—commissioned by Spanish Radio Productions with the cooperation of Miami Dade College—that found listening rates for Radio and TV Martí within Cuba were significantly higher than previously reported, especially for TV Martí. Although specific survey figures were not cited in the OIG report, OCB officials maintained that the survey showed that 17% of recent Cuban arrivals had watched TV Martí.<sup>147</sup> The OIG report also pointed to a February 2007 survey by the U.S. Interests Section (USINT) in Havana that reflected increased viewership. According to the BBG, that survey was completed by 500 Cuban visitors to the USINT (where TV Martí can be viewed) in January and February 2007, with 10% of the visitors indicating that they could watch TV Martí via UHF for brief periods.

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(...continued)

*Policies and Procedures for Ensuring that Radio Marti Broadcasts Adhere to Applicable Requirements*, 99-IB-010, June 1999; U.S. Department of State and the Broadcasting Board of Governors, Office of Inspector General, *Review of the Effectiveness and Implementation of Office of Cuba Broadcasting's New Program Initiatives*, Report No. IBO-A-03-01, January 2003, and *Report of Inspection, Office of Cuba Broadcasting*, Report No. ISP-IB 07-35, June 2007.

<sup>145</sup> U.S. Government Accountability Office, "Broadcasting to Cuba, Weaknesses in Contracting Practices Reduced Visibility into Selected Award Decisions," GAO-08-764, July 2008.

<sup>146</sup> The State Department originally issued a two-page summary of the report on its website on June 5, 2007, and pointed out that the full report received only "limited official distribution." On July 31, 2007, the State Department issued the entire 43-page report on its website, with certain sections redacted. That version is available at <http://oig.state.gov/lbry/>.

<sup>147</sup> Pablo Bachelet, "Martí Extending Its Reach, U.S. Says," *Miami Herald*, June 20, 2007.

At the same time as the release of the OIG report in 2007, other observers contended that TV Martí could hardly be viewed in Cuba because of the government's jamming efforts. John Nichols, a Pennsylvania State University communications professor, visited Cuba in late June 2007 on a fact-finding mission sponsored by the Center for International Policy (a group that opposes current U.S. policy toward Cuba), and concluded "that the signal from the plane is essentially unusable" and that there was "no evidence of significant viewership of TV Martí."<sup>148</sup> In interviews with the Associated Press, more than two dozen Cuban immigrants to Florida contended that while Radio Martí can be heard throughout Cuba, TV Martí can rarely be seen.<sup>149</sup> Prior BBG commissioned phone surveys in Cuba from 2003, 2005, and November 2006 estimated past week TV Martí viewership between 0.1% and 0.3% of those surveyed and past month viewership of almost 0.5%. The November 2006 survey, reportedly designed to show the early effects of the AeroMartí transmissions that began in late October, showed no statistically significant change from the 2003 and 2005 surveys. In the same surveys, Radio Martí had listenership of between 1% to 2% in the past week and 4% to 5% in the past month.

More recently, in January 2009, GAO issued a report asserting that the best available research suggests that Radio and TV Martí's audience is small, and cited telephone surveys since 2003 showing that less than 2% of respondents reported tuning in to Radio or TV Martí during the past week. With regard to TV Martí viewership, according to the report, all of the IBB's telephone surveys since 2003 show that less than 1% of respondents said that they had watched TV Martí during the past week. According to the GAO report, the IBB surveys show that there was no increase in reported TV Martí viewership following the beginning of AeroMartí and DirecTV satellite broadcasting in 2006. The GAO report also cited concerns with adherence to relevant domestic laws and international standards, including the domestic dissemination of OCB programming, inappropriate advertisements during OCB programming, and TV Martí's interference with Cuban broadcasts.<sup>150</sup> GAO testified on its report in a hearing held by the House Subcommittee on International Organizations, Human Rights, and Oversight of the Committee on Foreign Affairs on June 17, 2009.

In April 2010, the Senate Foreign Relations Committee majority issued a staff report that concluded that Radio and TV Martí "continue to fail in their efforts to influence Cuban society, politics, and policy." The report cited problems with adherence to broadcast standards, audience size, and Cuban government jamming. Among its recommendation, the report called for the IBB to move the Office of Cuba Broadcasting back to Washington and integrate it fully into the Voice of America.<sup>151</sup>

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<sup>148</sup> Vanessa Bauza, "TV Martí Signal Weak in Cuba, Broadcast Specialist Says," *South Florida Sun-Sentinel*, July 31, 2007.

<sup>149</sup> Laura Wides-Muñoz, "Despite Expenditures, TV Martí Still Tough to See in Cuba," Associated Press, July 30, 2007.

<sup>150</sup> U.S. Government Accountability Office, *Broadcasting to Cuba, Actions Are Needed to Improve Strategy and Operations*, GAO-09-127, January 2009.

<sup>151</sup> U.S. Congress, Senate Committee on Foreign Relations, *Cuba: Immediate Action Is Needed To Ensure the Survivability of Radio and TV Martí*, committee print, 111<sup>th</sup> Cong., 2<sup>nd</sup> sess., April 29, 2010, S.Prt. 111-46 (Washington: GPO, 2010).

## Funding for Cuba Broadcasting

From FY1984 through FY2009, about \$629 million has been spent for broadcasting to Cuba. In recent years, funding amounted to \$33.9 million in FY2007, \$33.4 million in FY2008, and an estimated \$34.8 million in FY2009. Until FY2005, the Administration provided funding information for Cuba broadcasting with a breakdown of the amounts spent for Radio versus TV Martí. Since FY2005, however, the Broadcasting Board of Governors has not made such a distinction in its annual budget request.

**FY2009.** The BBG requested, and Congress fully funded, \$34.4 million for broadcasting to Cuba in FY2009, slightly more than provided by Congress in FY2008. The requested amount included funding for the airborne platform that the Office of Cuba Broadcasting uses to broadcast Radio and TV Martí. The report to the Senate Appropriations Committee version of the FY2009 State Department, Foreign Operations, and Related Agencies Appropriations Act, S. 3288 (S.Rept. 110-425), recommended fully funding the Administration's request for Cuba broadcasting. The 110<sup>th</sup> Congress did not finalize FY2009 appropriations, although it did approve the Consolidated Appropriations Act for FY2009 (P.L. 110-329) that provided funding until March 6, 2009. In the 111<sup>th</sup> Congress, the FY2009 Omnibus Appropriations Act, (P.L. 111-8) provided funding for Cuba broadcasting under the Broadcasting Board of Governors' International Broadcasting Operations account, which fully funded the Administration's request for Cuba broadcasting.

**FY2010.** The BBG requested \$32.47 million in FY2010, about \$2.3 million less than provided in FY2009, and ultimately Congress appropriated \$30.474 million. The BBG proposed to change the news format for TV Martí by replacing the two evening news programs with news updates on the half hour, and to convert Radio Martí to an all news format. The proposed changes would eliminate 35 jobs from the Office of Cuba Broadcasting, representing a staffing cut of about 20% from 171 to 136 positions. Some press reports maintain that the change appears to be in part a way for the BBG to deal with criticism of political bias and propaganda at the station, while BBG officials maintain that the cut is an effort to streamline programming and to respond to feedback from audience research.<sup>152</sup>

In the Consolidated Appropriations Act, 2010 (H.R. 3288/P.L. 111-117) enacted in December 2009, Congress provided \$30.474 million for Cuba broadcasting in FY2010, with not more than \$5.5 million for non-salary and benefits expenses for TV Martí. This was almost \$2 million less than the Administration's request of \$32.47 million. Prior to the approval of the omnibus appropriations measure, House-passed H.R. 3081 would have fully funded the Administration's request while the Senate Appropriations Committee-reported version, S. 1434, would have provided \$15 million less than requested and prohibit funding for TV Martí broadcasts

The conference report to the bill (H.Rept. 111-366) also required two reports for the Committees on Appropriations: the first from the BBG within 90 days providing a multi-year strategic plan for broadcasting to Cuba; and the second from the GAO within 90 days of the submission of the BBG report, providing an assessment of the strategic plan.

<sup>152</sup> David Adams, "\$2.4M Cut May Hit Broadcasts to Cuba; Radio and TV Martí Faces 20 Percent Layoffs," *St. Petersburg Times*, May 14, 2009; and Frances Robles, "Radio and TV Martí Changing Formats," *Miami Herald*, May 13, 2009.

As set forth in the conference report, the BBG strategic plan is required to include (1) an analysis of the current situation in Cuba and an allocation of resources consistent with the relative priority of broadcasting to Cuba as determined by the annual Language Service Review and other factors, including input from the Secretary of State on the relative U.S. interest of broadcasting to Cuba; (2) the estimated audience sizes in Cuba for Radio and TV Martí and the sources and relative reliability of the data on which such estimates are based; (3) the annual operating cost (and total cost over the life of the contract) of any and all types of TV transmission and the effectiveness of each in increasing such audience size; (4) the principal obstacles to increasing such audience size; (5) an analysis of other options for disseminating news and information to Cuba, including DVDs, the Internet, and cell phones and other handheld electronic devices and a report on the cost effectiveness of each; and (6) an analysis of the program efficiencies and effectiveness that can be achieved through shared resources and cost saving opportunities in radio and television production between Radio and TV Martí and the Voice of America.

**FY2011.** The BBG requested \$29.179 million for Cuba broadcasting in FY2011, about \$1 million less than that appropriated in FY2010. Staffing would remain the same at 136 positions. The Senate version of the State Department and Foreign Operations appropriations measure, S. 3676, reported by the Senate Appropriations Committee on July 29, 2010 (S.Rept. 111-237), recommended \$28.789 million for broadcasting to Cuba (\$390,000 less than the request of \$29.179 million). In the report to the bill, the committee also stated that it did not support closing the Greenville Station in North Carolina that transmits the Cuba broadcasts, expanding TV Martí's transmission on DirecTV, or expanding and renovating the TV Martí studio until the Broadcasting Board of Governors submitted a multi-year strategic plan for broadcasting to Cuba.

The 111<sup>th</sup> Congress did not complete action on the FY2011 State Department and Foreign Operations appropriations measure. Instead, it approved a series of short-term continuing resolutions (P.L. 111-242, as amended), the last of which provided funding for federal agencies through March 4, 2011, generally at FY2010 levels and under conditions provided in enacted FY2010 appropriations measures.

## **Migration Issues**

### **1994 and 1995 Migration Accords**

Cuba and the United States reached two migration accords in 1994 and 1995 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 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 Station, most having been paroled into the United States.

### **Coast Guard Interdictions**

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 or eventually the United States. 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.

In recent years, the number of Cubans interdicted at sea by the U.S. Coast Guard rose from 666 in FY2002 to a high of 2,868 in FY2007. Subsequently, sea interdictions declined to 2,199 in FY2008, 799 in FY2009, and 422 in FY2010.<sup>153</sup> Major reasons for the decline in migrant interdictions from Cuba are reported to include the U.S. economic downturn, more efficient coastal patrolling, and more aggressive prosecution of migrant smugglers.<sup>154</sup> In October 2008, Mexico and Cuba negotiated a migration accord in October 2008 in an attempt to curb the irregular flow of migrants through Mexico.<sup>155</sup>

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 late December 2007, a Coast Guard official in Florida called on the local Cuban American community to denounce the smuggling and stop financing the trips that are leading to more deaths at sea.<sup>156</sup> In July 2010, three Cuban nationals (two living in Florida and one in Mexico) were charged in a U.S. federal court in Tampa with conspiracy, kidnapping, and

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<sup>153</sup> U.S. Coast Guard, Alien Migrant Interdiction, Coast Guard Office of Law Enforcement, “Total Interdictions, Fiscal Year 1982 to Present,” November 2, 2010.

<sup>154</sup> Alfonso Chardy and Juan Tamayo, “Exodus of Cubans Sharing,” *Miami Herald*, October 6, 2010.

<sup>155</sup> Diego Cevallos, “Migration: More and More Cubans Entering U.S. Through Mexico,” *Inter Press Service News Agency*, June 17, 2008.

<sup>156</sup> Laura Morales, “Exiles Urged to Stem Tide of Cubans,” *Miami Herald*, December 29, 2007.

extortion involving the abduction of Cuban migrants in Mexico.<sup>157</sup> The Cuban government also 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.

In the aftermath of Fidel Castro's July 2006, announcement that he was temporarily ceding political power to his brother, Department of Homeland Security officials announced several measures to discourage Cubans from risking their lives on the open seas. On August 11, 2006, Department of Homeland Security (DHS) Deputy Secretary Michael P. Jackson urged "the Cuban people to stay on the island" and discouraged "anyone from risking their life in the open seas in order to travel to the United States." At the same time, DHS announced additional measures to discourage Cubans from turning to alien smuggling as a way to enter the United States. The measures support family reunification by increasing the numbers of Cuban migrants admitted to the United States each year who have family members in the United States, although the overall number of Cubans admitted to the United States annually will remain at about 21,000. Cubans who attempt to enter the United States illegally will be deemed ineligible to enter under this new family reunification procedure. In another change of policy, Cuban medical personnel currently conscripted by the Cuban government to work in third countries are now allowed to enter the United States; their families in Cuba are also allowed to enter the United States.<sup>158</sup>

## **Migration Talks**

Semi-annual U.S.-Cuban talks alternating between Cuba and the United States had been held regularly on the implementation of the 1994 and 1995 migration accords, but the State Department cancelled the 20<sup>th</sup> round of talks scheduled for January 2004. At the time, the State Department maintained that Cuba 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 used 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 inadmissible to the United States.<sup>159</sup> In response to the cancellation of the talks, Cuban officials maintained that the U.S. decision was irresponsible and that Cuba was prepared to discuss all of the issues raised by the United States.<sup>160</sup>

Under the Obama Administration, Cuba and the United States agreed to restart the biannual migration talks (in addition to talks on direct mail service). The State Department took the first step to restart the talks when it sent a diplomatic note to the Cuban Interests Section on May 22, 2009. A State Department spokesman maintained that the talks would be used "to reaffirm both sides' commitment to safe, legal and orderly migration" as well as "to improve operational relations with Cuba on migration issues."<sup>161</sup> Cuba responded on May 30, 2009, and the State Department subsequently announced that the two countries would restart the talks.

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<sup>157</sup> Alfonso Chardy, "Cubans from Miami Charged in Migrant-Abduction Case," *Miami Herald*, July 10, 2010.

<sup>158</sup> Department of Homeland Security, "DHS Announces Additional Measures to Combat Alien Smuggling of Cubans," and "USCIS Will Further Strengthen Measures that Support the Reunification of Families Separated by the Castro Regime," Press Releases, August 11, 2006; Pablo Bachelet, "U.S. Program for Defecting Cuban Doctors a Success," *Miami Herald*, March 12, 2007.

<sup>159</sup> U.S. Department of State. State Department Regular Briefing, Richard Boucher. January 7, 2004.

<sup>160</sup> "Migration Talks Cancelled," *Miami Herald*, January 8, 2004.

<sup>161</sup> Lesley Clark, "U.S. Wants To Resume Migration Talks with Cuba," *Miami Herald*, May 22, 2009.

Since mid-2009, there have been three rounds of talks, with the U.S. team led by Principal Deputy Assistant Secretary of State for Western Hemisphere Affairs Craig Kelly, and the Cuba team led by Deputy Foreign Minister Dagoberto Rodriguez. The first round was held on July 14, 2009, in New York City. The State Department outlined its four objectives in the talks: ensuring that the U.S. Interests Section in Havana is able to operate effectively; gaining access to a deep-water port for the safe return of Cuban migrants picked up at sea; ensuring that U.S. diplomats are able to monitor the welfare of those Cubans who are sent back to the island; and gaining Cuban government acceptance of Cubans who are excluded from the United States because they have committed crimes.<sup>162</sup> Cuba reportedly proposed a new immigration agreement and more effective cooperation to combat alien smuggling, and also made known its opposition to the so-called “wet foot/dry foot policy.”<sup>163</sup>

The second round of talks were held on February 19, 2010, in Havana. According to the Department of State, “engaging in these talks underscores our interest in pursuing constructive discussions with the government of Cuba to advance U.S. interests of mutual concern.” It maintained that the United States views the talks “as an avenue to achieve practical, positive results that contribute to the full implementation of the [Migration] Accords and to the safety of citizens of both countries.”<sup>164</sup> Cuba’s Ministry of Foreign Affairs maintained that the meeting took place in an atmosphere of respect and included discussion of some aspects of a new draft migration accord proposed by Cuba at the July 2009 round of talks.<sup>165</sup> Cuba also reportedly raised the issue of improving and expanding the Cuban Interests Section in Washington. During the talks, U.S. officials urged Cuban officials to provide political prisoner Orlando Zapata Tamayo all necessary medical care, and also raised the case of USAID subcontractor Alan Gross detained in Cuba since early December 2009 and called for his release.

The third round of talks was held on June 18, 2010, in Washington, DC. In addition to migration issues, the U.S. team separately raised the case of Alan Gross and called for his immediate release. A day before the meeting, Secretary of State Clinton met with family members of Alan Gross and issued a statement expressing deep concern about his welfare and poor health and maintaining that his “continued detention ... is harming U.S.-Cuba relations.”<sup>166</sup>

For additional information on migration issues, see CRS Report R40566, *Cuban Migration to the United States: Policy and Trends*, by Ruth Ellen Wasem.

## **Guantanamo Naval Base**

The 45-square mile U.S. Naval Station 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,

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<sup>162</sup> William Gibson, “U.S. to Cuba: Take Back Criminals,” *South Florida Sun-Sentinel*, July 15, 2009.

<sup>163</sup> “Migration Talks with Cuba Put Off to February,” *Washington Post*, December 4, 2009.

<sup>164</sup> U.S. Department of State, “Cuba Migration Talks,” February 19, 2010.

<sup>165</sup> “Statement by the Cuban Ministry of Foreign Affairs,” *IPR Strategic Information Database*, February 22, 2010.

<sup>166</sup> U.S. Department of State, Secretary of State Hillary Rodham Clinton, “Continued Incarceration of Alan Gross,” June 17, 2010.

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 the 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.

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 some 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. Then-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.<sup>167</sup> The Cuban government, however, has expressed concerns about the treatment of prisoners at the U.S. base and has said it will keep pressing the international community to investigate the treatment of terrorist suspects.<sup>168</sup> In January 2005, it denounced what it described as “atrocities” committed at the Guantanamo base.<sup>169</sup>

President Obama issued Executive Order 13492 on January 22, 2009, that requires the closure of the Guantanamo detention facility (not the base itself) as soon as practicable, but no later than one year. Some Members of Congress also have called for the closure of the detention facility and have introduced legislation in the 111<sup>th</sup> Congress. Other measures have been introduced to prohibit the transfer of the enemy combatants detained at Guantanamo from being transferred to various military prisons in the United States. (For information on legislative initiatives related to the closing of the detention center, see CRS Report R40139, *Closing the Guantanamo Detention Center: Legal Issues*, by Michael John Garcia et al, and CRS Report R40754, *Guantanamo Detention Center: Legislative Activity in the 111th Congress*, by Michael John Garcia.)

With regard to the future of the Guantanamo base overall, 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 is to be prepared to enter into negotiations either to return the base to Cuba or to renegotiate the present agreement under mutually agreeable terms.

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<sup>167</sup> “Cuba Would Hand Over Escapees, Raúl Castro Says,” *Miami Herald*, January 20, 2002.

<sup>168</sup> For information on terrorist suspects held at Guantanamo, see CRS Report RL31367, *Treatment of “Battlefield Detainees” in the War on Terrorism*, by Jennifer K. Elsea; and CRS Report RS22173, *Detainees at Guantanamo Bay*, by Jennifer K. Elsea.

<sup>169</sup> Ana Radelat, “Cuba Turns Up Rhetoric on Guantanamo as UN Condemns Human Rights Abuses,” *CubaNews*, April 2005.

## **Cuba and the Organization of American States**

As noted above, the OAS voted in 1962 to exclude Cuba from participation in the regional organization because of its identification with Marxism-Leninism, but in early June 2009, the OAS overturned the 1962 resolution in a move that could eventually lead to Cuba's reentry into the regional organization. While Cuban government welcomed the OAS vote to overturn the 1962 resolution, it asserted that it would not return to the OAS because of its domination by the United States and because the organization promotes "neoliberal and egotistical capitalism."<sup>170</sup>

### **Background on Cuba's Exclusion from the OAS in 1962**

In January 1962, the OAS approved a resolution that excluded the government of Cuba from participation in the OAS because of its self-identification as a Marxist-Leninist government. The resolution was approved by the Eighth Meeting of Consultation of Ministers of Foreign Affairs that had been requested by Colombia in November 1961 pursuant to the Inter-American Treaty of Reciprocal Assistance (Río Treaty). Colombia's official request for the meeting contained no specific reference to Cuba or the Soviet Union. Instead, Colombia requested the meeting of foreign ministers to consider "threats to the peace and political independence of the American states that might arise from the intervention of extracontinental powers directed toward breaking American solidarity."<sup>171</sup> It was clear, however, that Colombia's request referred to the potential threat from Cuba and the Soviet Union.

In October 1961, Peru had also made a request for a meeting of consultation under the Río Treaty to discuss Cuba, and emphasized the Cuban government's "repression of the rights of the Cuban people" and its "use of diplomatic missions and secret agents to carry out communist infiltration in other countries of the hemisphere."<sup>172</sup> Peru's request ultimately was referred to the Inter-American Peace Committee, which provided a report on Cuba to the Eighth Meeting of Consultation of Foreign Ministers that helped inform the foreign ministers as they deliberated on Cuba. The report asserted that Cuba's connections with the Sino-Soviet bloc of countries were incompatible with the principles and standards that govern the regional system, and particularly with the collective security established by the charter of the OAS and the Río Treaty.<sup>173</sup>

Ultimately, the resolution that excluded Cuba from OAS participation had three main provisions:

- "That adherence by any member of the Organization of American States to Marxism-Leninism is incompatible with the inter-American system and the alignment of such a government with the communist bloc breaks the unity and solidarity of the hemisphere." It was approved by a vote of 20-1, with Cuba voting against.<sup>174</sup>

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<sup>170</sup> Cuban Ministry of Foreign Affairs, "Declaration of the Revolutionary Government," June 8, 2009.

<sup>171</sup> OAS, "Eighth Meeting of Consultation of Ministers of Foreign Affairs, January 22-31, 1962, Final Act," (OEA/Ser.C/II.8), p. 1.

<sup>172</sup> As quoted in: Edward Alden Jamison, "Cuba and the Inter-American System: Exclusion of the Castro Regime from the Organization of American States," *The Americas*, Vol. 36, No. 3, January 1980, p. 327.

<sup>173</sup> The report was cited in: OAS, "Eighth Meeting of Consultation of Ministers of Foreign Affairs, January 22-31, 1962, Final Act," Resolution VI, p. 13.

<sup>174</sup> Votes on the parts of the resolution and the overall resolution are drawn from: "Organización de los Estados Americanos, "Octava Reunión de Consulta de Ministros de Relaciones Exteriores Para Servir de Organo de Consulta, (continued...)"

- “That the present Government of Cuba, which has officially identified itself as a Marxist-Leninist government, is incompatible with the principles and objectives of the inter-American system.” It was approved by a vote of 20-1, with Cuba voting against.
- “That this incompatibility excludes the present Government of Cuba from participation in the inter-American system.” It was approved by a vote of 14-1, with Cuba voting against, and 6 abstentions—Argentina, Bolivia, Brazil, Chile, Ecuador, and Mexico.

It is noteworthy that the operative provision of the resolution excluding Cuba from participation in the OAS received, by just one vote, the required two-thirds vote. The countries abstaining from the operative provision justified their votes on juridical rather than political considerations, maintaining that the exclusion of an OAS member was not legally possible unless the OAS Charter itself was amended.<sup>175</sup>

### Efforts to Reinstate Cuba’s Participation in the OAS

In 2009, Cuba’s reinstatement into the inter-American system has become an issue taken up by a number of Latin American countries. In a public statement before the Fifth Summit of the Americas was held in mid-April 2009, OAS Secretary General José Miguel Insulza maintained that the 1962 resolution was outdated and that the upcoming OAS General Assembly meeting would be the appropriate forum to debate repealing or overturning it. Insulza explained, however, that repealing the resolution would not mean that Cuba would automatically be readmitted to the OAS. The Secretary General maintained that full reintegration of Cuba to the OAS is a decision for Cuba itself and for all OAS members to make, and is a decision that would have to be debated after the repeal of the 1962 resolution.<sup>176</sup> In a press interview, Insulza said that the resolution “was a bad idea in the first place,” and maintained that he wants “Cuba back in the Inter-American system.” Insulza also maintained that the Inter-American Democratic Charter does not prevent Cuba from rejoining the organization.<sup>177</sup>

As the June 2-3, 2009, OAS General Assembly in Honduras approached, a number of countries offered resolutions on the Cuba issue. At a meeting of the OAS Permanent Council on May 27, 2009, three countries—Honduras, Nicaragua, and the United States—offered draft resolutions on Cuba for consideration by the OAS General Assembly, but since none of the resolutions received enough support, the Permanent Council agreed to create a Working Group to attempt to find a consensus text for a resolution on Cuba.<sup>178</sup>

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(...continued)

Aplicación del Tratado Interamericano de Asistencia Recíproca,” Punta del Este, Uruguay, 31 enero 1962 (Doc. 72).

<sup>175</sup> Ibid, and Jamison, “Cuba and the Inter-American System: Exclusion of the Castro Regime from the Organization of American States,” op. cit., p. 344.

<sup>176</sup> OAS, “OAS General Assembly Is the Only Forum to Debate Abolishing 1962 Resolution on Cuba, Says Secretary General Insulza,” Press Release, April 17, 2009.

<sup>177</sup> Frances Robles, “Organization of American States Chief Says It’s Time Reactivate Cuba,” *Miami Herald*, April 18, 2009.

<sup>178</sup> OAS, “Working Group at the OAS Will Look for Consensus For a Resolution on Cuba,” *Press Release*, May 27, 2009.

As originally proposed, the draft resolutions by Honduras and Nicaragua were similar in that both would overturn the 1962 resolution. However, while the Honduran resolution would have simply revoked the 1962 resolution, the Nicaraguan resolution would have characterized the rescinding of the resolution “as an act of justice and historical redress toward Cuba and the peoples of the hemisphere.” Moreover, the Nicaraguan resolution would also have stated that the “exclusion of the Republic of Cuba from the inter-American system violates the Charter of the OAS and international law and constitutes an injustice and an unacceptable act of discrimination to the sovereignty of states and the right to self-determination of peoples.” The draft Honduran resolution also had a provision stating that future relations between Cuba and the OAS would depend on the express will of the Cuban Government and the relevant bodies of the OAS.

The draft U.S. resolution would not have explicitly repealed the 1962 resolution, but would have noted that “some of the circumstances since Cuba’s suspension from full participation in the Organization of American States may have changed.” The resolution would have supported “the eventual reintegration of Cuba into the Inter-American system,” but “consistent with commitments, principles, and values of the OAS Charter,<sup>179</sup> the Inter-American Democratic Charter,<sup>180</sup> and other instruments.” It would have instructed the OAS Permanent Council “to initiate a dialogue” with the government of Cuba regarding its “eventual reintegration into the inter-American system, consistent with the principles of sovereignty, independence, non-intervention, democracy, and full respect for human rights and fundamental freedoms, as enshrined in the OAS Charter, the Inter-American Democratic Charter, and other OAS instruments.”

After the first day of the OAS General Assembly on June 2, 2009, it appeared that OAS members were having difficulty reaching consensus on any of the resolutions, while press reports indicated that there was a possibility that there could be enough votes to readmit Cuba into the OAS without the conditions offered by the United States in its resolution.<sup>181</sup>

Ultimately, however, a consensus resolution was agreed to on June 3, 2009, with the support of all OAS members. The resolution overturns the 1962 resolution, and also states that Cuba’s participation in the OAS “will be the result of a process of dialogue initiated at the request of the Government of Cuba, and in accordance with the practices, purposes, and principles of the OAS.” The resolution does not have specific reference to the Inter-American Democratic Charter that had been included in the U.S. resolution, but it does link Cuba’s re-admittance to the purposes

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<sup>179</sup> The OAS Charter was originally signed in 1948, but has been amended several times, most recently in 1993. Article 2 of the Charter proclaims as one of the essential purposes of the OAS is to “promote and consolidate representative democracy, with due respect for the principle of nonintervention.” Article 3 sets forth as an OAS principle that “every State has the right to choose, without external interference, its political, economic, and social system and to organize itself in the way best suited to it, and has the duty to abstain from intervening in the affairs of another State. Subject to the foregoing, the American States shall cooperate fully among themselves, independently of the nature of their political, economic, and social systems.”

<sup>180</sup> The Inter-American Democratic Charter was approved by OAS states on September 11, 2001, at the OAS General Assembly meeting in Lima, Peru, as an instrument to strengthen democracy in the region. It defines essential elements of democracy and states how states might respond to threats to democracy. Article 2 of the charter states that “the effective exercise of representative democracy is the basis for the rule of law and of the constitutional regimes of the member states of the Organization of American States.” Article 23 states that “member states are responsible for organizing, conducting, and ensuring free and fair electoral processes.”

<sup>181</sup> Mark Landler, “Undercurrents Run Through Nations’ Debate on Cuba,” *New York Times*, June 3, 2009; Mary Beth Sheridan, “Clinton Faces Pressure Over Cuba Policy; At Meeting, Latin American Countries Push Hard to Readmit Island to OAS,” *Washington Post*, June 3, 2009.

and principles of the OAS. Moreover, an introductory provision of the resolution stated that the General Assembly's action was "guided by the purposes and principles of the Organization of American States embodied in the Charter of the Organization and its other fundamental instruments related to security, democracy, self determination, non-intervention, human rights, and development."

U.S. officials portrayed the consensus resolution as a diplomatic success because it averted the passage of a resolution that would have simply overturned the 1962 resolution, and allowed Cuba to immediately participate in the OAS. Instead, according to Dan Restrepo, Senior Director for Western Hemisphere Affairs at the National Security Council, "we have a result that lays out a process that specifically refers to the fundamental instruments of this organization of democracy, human rights, self-determination and other enumerated rights are precisely the rights that this Administration is working to advance and defend in Cuba and throughout the Americas."<sup>182</sup>

Secretary of State Hillary Clinton lauded the passage of the resolution, stating that the member nations of the OAS showed flexibility and openness today, and as a result we reached a consensus that focuses on the future instead of the past." She expressed satisfaction that there was agreement "that Cuba cannot simply take its seat and that we must put Cuba's participation to a determination down the road if it ever chooses to seek reentry." She asserted that "if and when the day comes to make that determination, the United States will continue to defend the principles of the Inter-American Democratic Charter and other fundamental tenets of the organization."<sup>183</sup>

Critics of the consensus resolution maintain that there should have been more stringent enforceable conditions regarding Cuba's reentry into the OAS, and that it ignores Cuba's denial of basic freedoms and the repression of its people. Some Members of Congress immediately criticized the consensus resolution for not more strongly linking Cuba's reentry to the principles of the Inter-American Democratic Charter, and contend that the resolution represents a setback for human rights activists in Cuba. Some threatened to withhold U.S. funding to the OAS if Cuba is readmitted as a member.<sup>184</sup> For example, in the House, H.R. 2687 (Mack) would withhold U.S. assessed and voluntary contributions to the OAS if Cuba is allowed full membership or participation in the OAS unless the President certifies that Cuba has satisfied certain conditions.

Supporters of the resolution maintain that it removes an irritant in U.S.-Latin American relations, while at the same time offers an avenue for the OAS to start a dialogue with Cuba on a range of issues, including democratic principles.<sup>185</sup> Many Latin American nations lauded the consensus resolution as an important step toward integrating Latin America into the Inter-American system. Argentina's Foreign Minister maintained that the action was an indication of the Obama

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<sup>182</sup> U.S. Department of State, "The OAS Ministerial in Honduras, Thomas A. Shannon Jr., Assistant Secretary of State for Western Hemisphere Affairs; and Senior Director for Western Hemisphere Affairs, National Security Council Dan Restrepo," Briefing Via Teleconference, June 3, 2009.

<sup>183</sup> U.S. Department of State, Secretary of State Hillary Rodham Clinton, "OAS Resolution," Press Statement, June 3, 2009.

<sup>184</sup> Lesley Clark and Frances Robles, "OAS' Cuba Move Touches off Outcry; A Decision to Retract the Organization of American States' 1962 Suspension of Cuba Was Met with Swift Calls by Some Lawmakers to Cut Off Funding," *Miami Herald*, June 4, 2009; and "Menendez Statement On OAS's Cuba Resolution," *Targeted News Service*, June 3, 2009.

<sup>185</sup> Nestor Ikeda, "OAS Ends Cuba Suspension After 47 Years, Marking Shift in U.S. Relations with Region," *AP Newswire*, June 4, 2009.

Administration's move to restore the "values and principles of multilateralism."<sup>186</sup> Honduran President Manuel Zelaya asserted that "the Cold War has ended this day in San Pedro Sula."<sup>187</sup>

Before the passage of the resolution, Cuba had not expressed any interest in rejoining the OAS. In a recent visit to Caracas, Cuban Foreign Minister Bruno Rodríguez asserted that Cuba was proud to be outside of the OAS, which he characterized as being an instrument of the United States.<sup>188</sup> In an essay published the day of the OAS vote on the resolution, Fidel Castro referred to the OAS as an organization that opened the gates to the Trojan horse (the United States) that backed "neoliberalism, drug trafficking, military bases, and economic crises" in the region.<sup>189</sup> As noted above, in the aftermath of the OAS vote, Cuba indicated that it would not return to the OAS, largely because it maintains that the organization is dominated by the United States.

## Legislative Initiatives in the 111<sup>th</sup> Congress

### Approved Measures

**P.L. 111-8 (H.R. 1105).** Omnibus Appropriations Act, 2009. Introduced February 23, 2009; House passed (245-178) February 25, 2009; Senate passed (voice vote) March 10, 2009; signed into law March 11, 2009. Division D, Financial Services and General Government Appropriations Act, 2009, has three provisions intended to ease U.S. sanctions on Cuba. These three provisions, explained below, were identical to provisions in the S. 3260, the Senate version of the Financial Services and General Government Appropriations Act, 2009, in the 110<sup>th</sup> Congress. In addition, the Joint Explanatory Statement to the bill requires the Department of the Treasury to prepare a report within 90 days on the steps that it is taking to assess the Office of Foreign Assets Control's allocation of resources for investigating and penalizing violations of the Cuba embargo with respect to the numerous other sanctions programs it administers. As part of the report, the Treasury Department is directed to provide detailed information on OFAC's Cuba-related licensing on its enforcement of the Cuba embargo.

Section 620 of Division D amends the Trade Sanctions Reform and Export Enhancement Act of 2000 (TSRA) to require the Secretary of the Treasury to issue regulations for travel to, from, or within Cuba under a general license for the marketing and sale of agricultural and medical goods, meaning that there would be no requirement to obtain special permission from OFAC. Such travel currently requires a specific license from OFAC, issued on a case by case basis.

Section 621 of Division D prohibits funds from being used to administer, implement, or enforce family travel restrictions that were imposed by the Bush Administration in June 2004. Those 2004 restrictions allowed family travel only to visit immediate family (grandparents, grandchildren, parents, siblings, spouses, and children) once every three years for a period not to exceed 14 days. Under the 2004 restrictions, a specific license was required from OFAC for such travel, and the authorized amount that family travelers could spend while in Cuba was limited to \$50 a day.

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<sup>186</sup> "Argentine Minister Welcomes OAS's "Historic Resolution" on Cuba," *BBC Monitoring Americas*, June 4, 2009.

<sup>187</sup> Nestor Ikeda, "OAS Overturns Cold War Ouster of Cuba, But Cubans Say Don't Want to Return," *AP Newswire*, June 3, 2009.

<sup>188</sup> "Cuba is Proud to Be Outside of the OAS," *Granma Internacional*, May 26, 2009.

<sup>189</sup> "Reflections of Fidel, The Trojan Horse," (June 2, 2009), as published in *Granma Internacional*, June 3, 2009.

Section 622 of Division D prohibits funds in the Act from being used to administer, implement, or enforce an amendment to the Cuban embargo regulations on February 25, 2005, requiring that U.S. agricultural exporters using the “payment of cash in advance” payment mechanism for selling their goods to Cuba must be paid in cash for their goods before the goods leave U.S. ports. Prior to the February 2005 change, the practice was for U.S. agricultural exporters to be paid in cash for their goods (as required under the TSRA), but before the actual delivery of the goods to Cuba.

Division H (Department of State, Foreign Operations, and Related Programs Appropriations Act, 2009) has two provisions related to Cuba. Section 7005 prohibits foreign assistance to the government of Cuba. Section 7015(f) provides that no funds appropriated for foreign assistance shall be obligated or expended for Cuba except as provided through the regular notification procedures of the Committees on Appropriations.

**P.L. 111-117 (H.R. 3288).** Consolidated Appropriations Act, 2010. Introduced July 22, 2009, as the Transportation, Housing and Urban Development, and Related Agencies Appropriations Act, 2010. House passed July 23, 2009. Senate passed with an amendment September 17, 2009. The conference report to the measure, H.Rept. 111-366 filed December 8, 2009, became the vehicle for the Consolidated Appropriations Act, 2010, which consisted of six appropriations bills. The House agreed to the conference on December 10, 2009, while the Senate agreed on December 13, 2009. The President signed the measure into law on December 16, 2009.

As signed into law, the measure has several Cuba provisions. Division C, Financial Services and General Government Appropriations Act, 2010, has a clarifying provision in section 619 relating to the issue of “payment of cash in advance” for U.S. exports to Cuba during FY2010 under the Trade Sanctions Reform and Export Enhancement Act of 2000. The provision defines the term to mean “payment before the transfer of title to, and control of, the exported items to the Cuban purchaser.”

Division F, Department of State, Foreign Operations, and Related Programs Appropriations Act, 2010, has several Cuba provisions. Section 7007 continues the general prohibition against foreign assistance to the government of Cuba. Section 7015(f) continues the requirement that no funds for foreign assistance shall be obligated or expended for Cuba except as provided through the regular notification procedures of the Committees on Appropriations. With regard to Cuba broadcasting, the conference report provides \$30.474 million for Radio and TV Martí (almost \$2 million less than the Administration’s request) with not more than \$5.5 million for non-salary and benefits expenses for TV Martí. The conference report also has two reporting requirements on Cuba broadcasting: the first from the BBG within 90 days providing a multi-year strategic plan for broadcasting to Cuba; and the second, from the GAO within 90 days of the submission of the BBG report, providing an assessment of the strategic plan. With regard to Cuba democracy programs, the conference report fully funds the Administration’s request for \$20 million in ESF.

**S.Res. 149 (Martinez).** Expresses solidarity with the writers, journalists, and librarians of Cuba on World Press Freedom Day and calling for the immediate release of citizens of Cuba imprisoned for exercising rights associated with freedom of the press. Introduced and approved by Unanimous Consent on May 14, 2009.

**S.Con.Res. 54 (Nelson, Bill).** Recognizes the life of Orlando Zapata Tamayo, who died on February 23, 2010, in the custody of the Cuban government, and calls for a continued focus on the promotion of internationally recognized human rights in Cuba. Introduced March 10, 2010.

S.Amdt. 3552 (Nelson, Bill), which noted that the Department of State reports that the Cuban government has not granted prison visits to the International Committee of the Red Cross, Amnesty International, or Human Rights Watch since 1988, was agreed to by Unanimous Consent on March 18, 2010. S.Con.Res. 54 subsequently agreed to by Unanimous Consent on March 18, 2010.

## **Additional Legislative Initiatives**

**H.Con.Res. 132 (Tiahrt).** Expresses the sense of Congress that with respect to the totalitarian government of Cuba, the United States should pursue a policy that insists upon freedom, democracy, and human rights, including the release of all political prisoners, the legalization of political parties, free speech and a free press, and supervised elections, before increasing U.S. trade and tourism to Cuba. Introduced May 20, 2009; referred to the Committee on Foreign Affairs.

**H.Con.Res. 251 (McGovern) and H.Con.Res. 252 (Ros-Lehtinen).** Recognizes the life of Orlando Zapata Tamayo, who died on February 23, 2010, in the custody of the Cuban government, and calls for a continued focus on the promotion of internationally recognized human rights in Cuba. H.Con.Res. 251 and 252 were both introduced March 11, 2010, and referred to the Committee on Foreign Affairs.

**H.R. 187 (Serrano).** Waives certain prohibitions with respect to nationals of Cuba coming to the United States to play organized professional baseball. Introduced January 6, 2009; referred to the Committees on Foreign Affairs and Judiciary.

**H.R. 188 (Serrano).** Lifts the trade embargo on Cuba by repealing and amending various laws. Introduced January 6, 2009; referred to the Committees on Foreign Affairs, Ways and Means, Energy and Commerce, Judiciary, Financial Services, Oversight and Government Reform, and Agriculture.

**H.R. 332 (Lee).** Provides that no funds made available to the Department of the Treasury may be used to implement, administer, or enforce regulations to require specific licenses for travel-related transactions directly related to educational activities in Cuba. Introduced January 8, 2009; referred to the Committee on Foreign Affairs.

**H.R. 375 (Ros-Lehtinen).** Section 209 of the bill sets forth restrictions on nuclear cooperation with countries assisting the nuclear program of Venezuela or Cuba or transferring advanced conventional weapons to Venezuela or Cuba. Introduced January 9, 2009; referred to the Committee on Foreign Affairs.

**H.R. 874 (Delahunt)/ S. 428 (Dorgan).** Identical bills would prohibit the President from regulating or prohibiting, directly or indirectly, travel to or from Cuba by U.S. citizens or legal residents, or any of the transactions incident to such travel. H.R. 874 was introduced February 4, 2009, and referred to the House Committee on Foreign Affairs. S. 428 was introduced February 12, 2009, and referred to the Senate Committee on Foreign Affairs.

**H.R. 1103 (Wexler)/ S. 1234 (Lieberman).** Modifies the prohibition on recognition by U.S. courts of certain rights relating to certain marks, trade names, or commercial names. Introduced February 13, 2009; referred to the Committee on the Judiciary.

**H.R. 1528 (Rangel).** Allows travel between the United States and Cuba. Introduced March 16, 2009; referred to the Committee on Foreign Affairs

**H.R. 1530 (Rangel).** Lifts the trade embargo on Cuba by repealing and amending various laws. Introduced March 16, 2009; referred to the Committee on Foreign Affairs, and in addition to the Committees on Ways and Means, Energy and Commerce, the Judiciary, Financial Services, Oversight and Government Reform, and Agriculture.

**H.R. 1531 (Rangel)/S. 1089 (Baucus).** Promoting American Agricultural and Medical Exports to Cuba Act of 2009. Similar, although not identical, bills facilitate the export of U.S. agricultural products to Cuba as authorized by the Trade Sanctions Reform and Export Enhancement Act of 2000, remove impediments to the export to Cuba of medical devices and medicines, allow travel to Cuba by U.S. legal residents, establish an agricultural export promotion program with respect to Cuba, and repeal the Section 211 trademark sanction. H.R. 1531 introduced March 16, 2009; referred to the Committee on Foreign Affairs, Ways and Means, Judiciary, Agriculture, and Financial Services. S. 1089 introduced May 20, 1989; referred to the Senate Committee on Finance.

**H.R. 1737 (Moran, Jerry).** Agricultural Export Facilitation Act of 2009. Amends the Trade Sanctions Reform and Export Enhancement Act of 2000 (TSRA) to provide that the term “payment of cash in advance” means that the payment by the purchaser of an agricultural commodity or product and the receipt of such payment by the seller occurs prior to 1) the transfer of such commodity or product to the purchaser, and 2) the release of control of such commodity or product to the purchaser. Provides that the President may not restrict direct transfer from a Cuban financial institution to a U.S. financial institution in payment for a product authorized for sale under TSRA. Also amends TSRA to require the Secretary of the Treasury to issue regulations under which, at a minimum, travel-related transactions may be authorized by specific license or general license for travel to, from, or within Cuba in connection with commercial export sales, transportation, and sales and marketing activities of agricultural commodities, medicine, and medical devices pursuant to TSRA. Introduced March 26, 2009; referred to the Committees on Foreign Affairs, Judiciary, Financial Services, and Agriculture.

**H.R. 1918 (Flake).** Permits U.S. companies to participate in the exploration for and the extraction of hydrocarbon resources from any portion of a foreign maritime exclusive economic zone that is contiguous to the exclusive economic zone of the United States. Also amends the Trade Sanctions Reform and Export Enhancement Act of 2000 to provide for general license authority for travel to Cuba by persons engaging in hydrocarbon exploration and extraction activities. Introduced April 2, 2009; referred to the Committee on Foreign Affairs.

**H.R. 2005 (King).** Amends the Cuban Liberty and Democratic Solidarity Act of 1996 to require that, in order to determine that a democratically elected government exists in Cuba, the government extradite to the United State 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 April 21, 2009; referred to the House Committee on Foreign Affairs.

**H.R. 2272 (Rush).** United States-Cuba Trade Normalization Act of 2009. Lifts the trade embargo on Cuba by amending and repealing various laws. Extends nondiscriminatory trade treatment to Cuba. Removes Cuba from the State Sponsors of Terrorism List. Introduced May 6, 2009;

referred to the Committees on Foreign Affairs, Ways and Means, Energy and Commerce, Judiciary, Financial Services, Oversight and Government Reform, and Agriculture.

**H.R. 2410 (Berman).** Foreign Relations Authorization Act, FY2010 and FY2011. Introduced May 14, 2009. Reported by House Committee on Foreign Affairs June 4, 2009 (H.Rept. 111-136). House passed (235-187) June 10, 2009. Authorizes funding for radio and television broadcasting to Cuba within the International Broadcasting Operations account. During June 10, 2009, floor consideration, the House defeated H.Amdt. 182 (Ros-Lehtinen) by a vote of 205-224 that would have required the Secretary of State to withhold funds from the U.S. contribution to the International Atomic Energy Agency (IAEA) an amount equal to nuclear technical cooperation provided by the IAEA in 2007 to Iran, Syria, Sudan, and Cuba. No further action was taken on the measure.

**H.R. 2475 (Ros-Lehtinen).** Foreign Relations Authorization and Reform Act, FY2010 and FY2011. Introduced May 19, 2009; referred to the Committee on Foreign Affairs. Section 501 of the bill would fully fund the Administration's \$32.5 million request for Cuba broadcasting for FY2010, and would authorize funds as needed for FY2011. Section 728 of the bill consists of language contained in H.R. 375 that sets forth restrictions on nuclear cooperation with countries assisting the nuclear program of Venezuela or Cuba or transferring advanced conventional weapons to Venezuela or Cuba.

**H.R. 2647 (Skelton)/S. 1390 (Levin).** National Defense Authorization Act for FY2010. House passed June 25, 2009. Senate passed July 23, 2009, with an amendment substituting the language of S. 1390. During July 22, 2009, consideration of S. 1390, the Senate approved S.Amdt. 1535 (Martinez), which required a report from the Director of National Intelligence on potential Cuban activities related to drug trafficking, clandestine activities in the United States, research and development for biological weapons production, and Cuba's relations with Iran, North Korea, Venezuela and several other countries. That provision became Section 1222 of the Senate version of H.R. 2647. The House version of the bill did not include a similar provision, and the provision was not included in the conference report (H.Rept. 111-288) filed on October 7, 2009.

**H.R. 2687 (Mack).** Withholds U.S. assessed and voluntary contributions to the Organization of American States if Cuba is allowed full membership or participation in the OAS unless the President certifies that Cuba has satisfied certain conditions. Introduced June 3, 2009; referred to the Committee on Foreign Affairs.

**H.R. 3081 (Lowey)/S. 1434 (Leahy).** FY2010 State Department, Foreign Operations, and Related Programs Appropriations. H.R. 3081 introduced and reported (H.Rept. 111-187) June 26, 2009. House approved July 9, 2009, by a vote of 318-106. S. 1434 introduced and reported (S.Rept. 111-44) July 9, 2009. In both bills, section 7007 would continue the prohibition against direct funding for the government of Cuba, and section 7015(f) would continue the requirement that no assistance shall be obligated or expended for assistance for Cuba except as provided through the regular notification procedures of the Committees on Appropriations. The reports to both bills would also fully fund the Administration's request of \$20 million in ESF for Cuba democracy programs.

With regard to Cuba broadcasting, H.R. 3081 would fully fund the Administration's request for \$32.474 million, while S. 1434 would prohibit funding for TV Martí broadcasts to Cuba and provide just \$17.474 million for Cuba broadcasting, \$15 million less than the request. The Senate

bill, in section 7092(c), would require a report from the Secretary of State within 90 days on various aspects of Cuba broadcasting.

With regard to anti-drug cooperation with Cuba, S. 1434 would, in section 7092, provide \$1 million in International Narcotics Control and Law Enforcement (INCLE) assistance for preliminary work by the State Department or other entity designated by the Secretary of State to establish cooperation with appropriate agencies of the government of Cuba on counternarcotics matters, including matters relating to cooperation, coordination, and mutual assistance in the interdiction of illicit drugs being transported through Cuban airspace or over Cuba waters. The amount shall not be available if the Secretary of State certifies that Cuba does 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 is credible evidence of involvement of the government of Cuba in drug trafficking during the preceding 10 years. H.R. 3081 does not have a similar provision.

For final action, see Division F of P.L. 111-117, the Consolidated Appropriations Act, 2010, described above, which included provisions on foreign aid, Cuba broadcasting, and Cuba democracy funding. The omnibus measure did not include any language on drug cooperation with Cuba.

**H.R. 3170 (Serrano)/S. 1432 (Durbin).** FY2010 Financial Services and General Government Appropriations. H.R. 3170 introduced and reported (H.Rept. 111-202) July 10, 2009. House approved (219-208) July 16, 2009. S. 1432 introduced and reported (S.Rept. 111-43) July 9, 2009. Both bills have a provision (section 618 in the House bill and section 617 in the Senate bill) that provides that the term “payment of cash in advance” as used in the Trade Sanctions Reform and Export Enhancement Act of 2000 shall be interpreted as payment before the transfer of title to, and control of, the exported items to the Cuban purchaser.

For final action, see Division C of P.L. 111-117, the Consolidated Appropriations Act, 2010, described above, which included the “payment of cash in advance” provision in section 619.

**H.R. 4645 (Peterson)/S. 3112 (Klobuchar).** Travel Restriction Reform and Export Enhancement Act. Removes obstacles to legal sales of U.S. agricultural commodities to Cuba and ends travel restrictions on all Americans to Cuba. Section 2 would lift all restrictions on travel to Cuba and prohibit the President from regulating or prohibiting such travel except under certain circumstances. Section 3 would define the term “payment of cash in advance” for U.S. agricultural sales to Cuba under the Trade Sanctions Reform and Export Enhancement Act of 2000 (TSRA) as the payment by the purchaser and the receipt of such payment by the seller prior to transfer of title of such commodity or product to the purchaser and the release of control of such commodity or product to the purchaser. Section 4 would authorize direct transfers between Cuban and U.S. financial institutions executed in payment for a product authorized for sale under TSRA. H.R. 4645 introduced February 23, 2010; referred to Committee on Foreign Affairs, and in addition to the Committees on Agriculture and Financial Services. House Agriculture Committee ordered reported (25-20) June 30, 2010; reported September 29, 2010 (H.Rept. 111-653, Part I). No further action was taken on the measure. S. 3112 introduced March 15, 2010; referred to the Committee on Foreign Relations.

**H.R. 5620 (Ros-Lehtinen).** Caribbean Coral Reef Protection Act of 2010. Introduced June 28, 2010; referred to the Committee on the Judiciary, and in addition to the Committees on Foreign Affairs, Financial Services, and Oversight and Government Reform. Amends the Cuban Liberty

and Democratic Solidarity Act of 1996 to exclude from the United States aliens who invest \$1 million or more that contributes to the enhancement of the ability of Cuba to develop petroleum resources located off its coast. Also provides for the imposition of sanctions and prohibition on facilitation of development of Cuba's petroleum resources.

**S. 774 (Dorgan), National Energy Security Act of 2009.** Section 371 authorizes United States persons to engage in any transaction necessary for the exploration for and extraction of hydrocarbon resources from any portion of any foreign exclusive economic zone that is contiguous to the exclusive economic zone of the United States, and to export without license authority all equipment necessary for the exploration for or extraction of these hydrocarbon resources. Section 372 would amend the Trade Sanctions Reform and Export Enhancement Act of 2000 to provide for general license authority for travel by persons engaging in hydrocarbon exploration and extraction activities. Introduced April 1, 2009; referred to the Committee on Finance.

**S. 1517 (Murkowski).** Domestic Energy Security Act of 2009. Section 6 authorizes United States persons to engage in transactions for the exploration for and extraction of hydrocarbon resources from any portion of any foreign exclusive economic zone that is contiguous to the exclusive economic zone of the United States, and to export without license all equipment necessary for these activities. Section 7 would amend the Trade Sanctions Reform and Export Enhancement Act of 2000 to provide for general license authority for travel by persons engaging in hydrocarbon exploration and extraction activities. Introduced July 24, 2009; referred to the Committee on Energy and Natural Resources.

**S. 1808 (Feingold).** Control Spending Now Act. Section 6012 would eliminate Radio and TV Martí by repealing the Radio Broadcasting to Cuba Act (P.L. 98-111) and the Television Broadcasting to Cuba Act (Title II, Part D of P.L. 101-246). Introduced October 20, 2009; referred to Committee on Finance.

**S. 3454 (Levin).** National Defense Authorization Act for FY2011. Introduced and reported by the Senate Committee on Armed Services on June 4, 2010 (S.Rept. 111-201). Section 1236 would require a report (in unclassified form, but may include a classified annex) within 180 days from the Secretary of Defense, in consultation with the Director of National Intelligence and the Secretary of State, on: a description of any connections between the government of Cuba and drug trafficking organizations in the Western Hemisphere; a description of any economic, intelligence or other support provided to Cuba by the governments of Bolivia, Ecuador, or Venezuela; a description of any agreements or other arrangements between Cuba and the governments currently on the U.S. list of state sponsors of terrorism; and a description of any activities by Cuba to develop any biological or cyber warfare capabilities, including any collaboration with other countries in the Western Hemisphere. The Senate did not complete action on the bill. The House-passed version of the defense authorization bill, H.R. 5136 (Skelton), did not include a similar provision.

**S. 3676 (Leahy).** FY2011 Department of State, Foreign Operations, and Related Programs Appropriations Act. Introduced and reported by the Senate Committee on Appropriations on July 29, 2010 (S.Rept. 111-237). Section 7007 would continue a general prohibition against direct assistance for Cuba. Section 7015(f) would continue the requirement that no funds for foreign assistance shall be obligated or expended for assistance to Cuba except as provided through the regular notification procedures of the Committees on Appropriations. Section 7034(g)(6) provides that of the ESF appropriated for several countries including Cuba, \$12.5 million shall be

transferred and merged with funds for the National Endowment for Democracy to be allocated for democracy programs. The committee report clarifies that \$2 million in ESF appropriated for Cuba would be transferred to the National Endowment for Democracy. In the report to the bill, the committee also recommends \$28.789 million for broadcasting to Cuba (\$390,000 less than the request of \$29.179 million). In the report, the committee also states that it does not support closing the Greenville Station, expanding TV Martí's transmission on DirecTV, or the request to expand and renovate the TV Martí studio until the Broadcasting Board of Governors submits a multi-year strategic plan for broadcasting to Cuba. The Senate did not complete action on the measure, but Congress approved a series of short-term continuing resolutions (P.L. 111-242, as amended), the last of which (P.L. 111-322) provided funding for federal agencies through March 4, 2011, generally at FY2010 levels and under conditions provided in enacted FY2010 appropriations measures.

**S. 3677 (Durbin).** FY2011 Financial Services and General Government Appropriations Act. Introduced and reported by the Senate Committee on Appropriations on July 29, 2010 (S.Rept. 111-238). Section 621 would continue to define during fiscal year 2011 "payment of cash in advance" under the Trade Sanctions Reform and Export Enhancement Act of 2000 as payment before the transfer of title to, and control of, the exported items to the Cuban purchaser. This would extend a similar provision for fiscal year 2010 that appeared in the FY2010 Consolidated Appropriations Act (P.L. 111-117, Division C, Section 619). The Senate did not complete action on the measure, but Congress approved a series of short-term continuing resolutions (P.L. 111-242, as amended), the last of which (P.L. 111-322) provided funding for federal agencies through March 4, 2011, generally at FY2010 levels and under conditions provided in enacted FY2010 appropriations measures.

## Legislation in the 110<sup>th</sup> Congress

### Approved Measures

**P.L. 110-161 (H.R. 2764).** FY2008 Consolidated Appropriations Act. H.R. 2764 was originally introduced and reported by the House Committee on Appropriations (H.Rept. 110-197) on June 18, 2007, as the FY2008 State, Foreign Operations, and Related Agencies Appropriations Act. The House passed (241-178) the measure on June 22, 2007. The Senate Appropriations Committee reported the bill on July 10, 2007 (S.Rept. 110-128), and the Senate passed (81-12) it on September 6, 2007. On December 17, 2007, H.R. 2764 subsequently became the vehicle for the FY2008 Consolidated Appropriations Act, which included 11 FY2008 appropriations measures. President Bush signed the measure into law on December 26, 2007.

As signed into law, Division J of the Consolidated Appropriations Act covers State Department, Foreign Operations, and Related Agencies appropriations. The law has the following Cuba provisions:

- Similar to previous years, Section 607 of Division J prohibits direct funding for Cuba. This provision had been included in both the House and Senate versions of the bill.
- Section 620 of Division J adds Cuba to the list of countries requiring a special notification to the Appropriations Committees for funds obligated or expended under the act. This provision had been included in the Senate version of the bill.

- Section 691(b) of Division J provides that Cubans who supported an anti-Castro guerrilla group in the 1960s known as the Alzados are eligible for U.S. refugee status. The Senate version of the bill had included this provision.
- As set forth in the joint explanatory statement, the measure provides \$45.7 million in ESF for Cuba democracy programs as requested by the Administration. Both the House- and Senate-passed versions of H.R. 2764 fully funded the Administration's request for \$45.7 million in ESF for Cuba democracy programs. The House committee-reported bill would have provided \$9 million in ESF for such programs, but during June 21, 2007, floor consideration, the House approved H.Amdt. 351 (Diaz-Balart) by a vote of 254-170 that increased ESF by \$36.7 million in order to fully fund the Administration's request. The Senate Appropriations Committee report to the bill would have provided \$15 million in ESF for Cuba democracy programs, but during September 6, 2007, floor consideration, the Senate approved S.Amdt. 2694 (Martinez) by voice vote that increased funding for Cuba democracy programs by \$30.7 million to fully fund the Administration's request.
- As set forth in the joint explanatory statement, the measure provides \$33.681 million for Radio and TV Marti broadcasting to Cuba, \$5.019 million below the Administration's request of \$38.7 million and identical to the amount provided for FY2007. Both the House and Senate committee reports to the bill had recommended \$33.681 million for Cuba broadcasting. S.Amdt. 2695 (Martinez), which was withdrawn from consideration on September 6, 2007, would have increased funding by \$5.019 million to fully fund the Administration's request.
- The measure does not include contrasting provisions related to counternarcotics assistance for Cuba that were included in the House and Senate versions of the bill. Section 673 of the House bill would have specifically prohibited International Narcotics Control and Law Enforcement (INCLE) assistance to the Cuban government. Section 696 of the Senate bill would have provided \$1 million in INCLE assistance for preliminary work by the Department of State, or such other entity as the Secretary of State may designate, to establish cooperation with the Cuban government on counternarcotics matters.

The final enacted measure does not include provisions easing Cuba sanctions that had been included in the House and Senate-committee versions of the FY2008 Financial Services and General Government Appropriations Act or the Senate committee-reported version of the FY2008 Agriculture Appropriations bill.

**P.L. 110-96 (S. 1612).** International Emergency Economic Powers Enhancement Act. Introduced and reported by the Committee on Banking, Housing, and Urban Affairs on June 13, 2007 (S.Rept. 110-82). Senate approved, amended, by unanimous consent on June 26, 2007. House approved by voice vote October 2, 2007. As approved, the bill amends the International Emergency Economic Powers Act (IEEPA) to increase the potential civil penalty imposed on any person who commits an unlawful act under the act to not exceed the greater of \$250,000 (from \$50,000) or an amount that is twice the amount of the transaction. The bill also increases a criminal penalty to not more than \$1 million and/or 20 years imprisonment.

**S.Res. 573 (Martinez).** Celebrates Cuba Solidarity Day, recognizes the injustices faced by the Cuban people, and stands in solidarity with the Cuban people as they continue to work towards

democratic changes in their homeland. Introduced and passed by the Senate on May 21, 2008, by unanimous consent.

## **Additional Considered Measures with Cuba Provisions**

The following measures that received consideration contained various provisions on Cuba that would have eased U.S. sanctions, but none of these provisions made it into final enacted measures. For a complete listing of additional legislative initiatives on Cuba in the 110<sup>th</sup> Congress, see CRS Report RL33819, *Cuba: Issues for the 110<sup>th</sup> Congress*.

**H.R. 2419 (Peterson).** Farm, Nutrition, and Bioenergy Act of 2007. Introduced May 22, 2007; House passed July 27, 2007. Senate passed December 14, 2007. During House floor consideration on July 27, 2007, the House rejected (182-245) H.Amdt. 707 (Rangel), which would have clarified the meaning of “payment of cash in advance” for the sale of agricultural commodities to Cuba; authorized direct transfer between U.S. and Cuban financial institutions for a product authorized for sale under the Trade Sanctions Reform and Export Enhancement Act of 2000; and would have authorized the issuance of U.S. visas for Cubans to conduct activities, including phytosanitary inspections, related to the export of U.S. agricultural goods to Cuba.

In the Senate, S.Amdt. 3660 (Baucus), which would have eased restrictions on U.S. agricultural sales to Cuba, was proposed on December 11, 2007, but subsequently withdrawn the same day. Several amendments regarding Cuba were submitted, but never proposed: S.Amdt. 3668 (Baucus), would have eased restrictions on U.S. agricultural exports to Cuba; S.Amdt. 3796 (Nelson, Bill), would have required a certification of certain human rights conditions in Cuba before restrictions on U.S. agricultural exports to Cuba would be eased; S.Amdt. 3792 (Martinez), would have expressed the sense of the Senate regarding the human rights situation in Cuba; and S.Amdt. 3793 (Martinez), would have prevented the easing of restrictions on U.S. agricultural exports to Cuba as long as the country is identified by the Secretary of State as a “state sponsor of terror.”

**H.R. 2829 (Serrano).** FY2008 Financial Services and General Government Appropriations Act. Introduced and reported by House Appropriations Committee (H.Rept. 110-207) June 22, 2007. Reported by Senate Appropriations Committee July 13, 2007 (S.Rept. 110-129). House passed (240-179) June 28, 2007. As approved by the House, Section 903 would have prevented Treasury Department funds from being used to implement a February 2005 regulation that requires the payment of cash in advance prior to the shipment of U.S. agricultural goods to Cuba. The House adopted the provision during June 28, 2007, floor consideration when it approved H.Amdt. 467 (Moran, Kansas) by voice vote. The Senate Appropriations Committee version had a similar provision in Section 619, as well as another provision in Section 620 that would have allowed for travel to Cuba under a general license for the marketing and sale of agricultural and medical goods. The Cuba provisions of both the House and Senate versions of the bill were not included in the final enacted version of the measure, which was included as Division D of the FY2008 Consolidated Appropriations Act (P.L. 110-161, H.R. 2764).

**H.R. 3161 (DeLauro)/ S. 1859 (Kohl).** FY2008 Agricultural, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act. H.R. 3161 introduced and reported by House Appropriations Committee July 24, 2007; House passed August 2, 2007. S. 1859 introduced and reported by Senate Appropriations Committee July 24, 2007 (S.Rept. 110-134). Section 741 of the Senate bill would authorize travel to Cuba under a general license for the marketing and sale of agricultural and medical goods to Cuba. The Cuba provision in the Senate

version was not included in the final enacted version of the measure, which was included as Division A of the FY2008 Consolidated Appropriations Act (P.L. 110-161, H.R. 2764).

**H.R. 7323 (Serrano).** FY2009 Financial Services and General Government Appropriations bill. Introduced and reported by the House Appropriations Committee on December 10, 2008 (H.Rept. 110-920). The committee had approved a draft version of the bill on June 25, 2008. The bill has several provisions that would have eased Cuba sanctions. Section 621 would have prohibited funds in the Act from being used to administer, implement, or enforce new language in the Cuban embargo regulations added on February 25, 2005 (31CFR Part 515.533), that requires that U.S. agricultural exports to Cuba must be paid for before they leave U.S. ports. Section 622 would have allowed for family travel once a year (instead of the current restriction of once every three years). Section 623 would have expanded family travel to visit an aunt, uncle, niece, nephew, or first cousin (instead of the current restriction limiting such travel to visit a spouse, child, grandchild, parent, grandparent, or sibling). The report to the bill would require the Treasury Department's Office of Foreign Assets Control (OFAC) to provide detailed information on OFAC's Cuba-related licensing and enforcement actions. None of these provisions were included in the Consolidated Appropriations Act for FY2009 (P.L. 110-329) that provided funding until March 6, 2009.

**S. 3001(Levin).** Duncan Hunter National Defense Authorization Act for FY2009. S.Amdt. 5581 (Dodd), submitted on September 15, 2008, would, for a 180-day period, allow unrestricted family travel; ease restrictions on remittances by removing the limit and allowing any American to send remittances to Cuba; expand the list of allowable items that may be included in gift parcels; and allow for unrestricted U.S. cash sales of food, medicines, and relief supplies to Cuba. The amendment was not considered and therefore not included in the final bill.

**S. 3260 (Durbin).** Financial Services and General Government Appropriations Act, 2009. Introduced and reported by Senate Appropriations Committee (S.Rept. 110-417) on July 14, 2008. Includes provisions easing restrictions on payment terms for the sale of agricultural goods to Cuba (section 618), travel relating to the commercial sale of agricultural and medical goods (section 619), and family travel (section 620). None of these provisions were included in the Consolidated Appropriations Act for FY2009 (P.L. 110-329) that provided funding until March 6, 2009.

**S. 3288 (Leahy).** Department of State, Foreign Operations, and Related Programs Appropriations Act, 2009. Introduced and reported by Senate Appropriations Committee (S.Rept. 110-425) July 18, 2008. Includes several Cuba provisions: section 706 continues a prohibition on assistance to Cuba, unless the President determines that it is in the national interest of the United States; section 719 continues the provision from FY2008 that requires that any assistance for Cuba go through the regular notification procedures of the Committees on Appropriations; section 779 provides for \$1 million for preliminary work by the Department of State, or other entity designated by the Secretary of State, to establish cooperation with appropriate Cuban agencies on counternarcotics matters, although the money would not be available if the Secretary certifies that Cuba (1) does not have in place 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 (2) there is credible evidence of involvement of the government of Cuba in drug trafficking during the preceding 10 years. The Senate Appropriations Committee report to the bill recommended full funding for the Administration's requests of \$34.392 million for Cuba broadcasting and \$20 million in ESF for Cuba democracy programs, and called for the State Department and USAID to conduct regular evaluations to ensure the cost effectiveness of the programs.

**S. 3289 (Kohl).** Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2008. Introduced and reported by Senate Appropriations Committee (S.Rept. 110-426) July 21, 2008. Includes a provision (section 737) that would ease restrictions on travel to Cuba for the sale of agricultural and medical goods. This provision was not included in the Consolidated Appropriations Act for FY2009 (P.L. 110-329) that provided funding until March 6, 2009.

## Appendix A. Developments in 2009-2010

For more recent entries, see “Recent Developments” above.

On July 29, 2010, the Senate Committee on Appropriations reported S. 3676 (S.Rept. 111-237), the FY2011 Department of State, Foreign Operations, and Related Programs Appropriations Act with several Cuba provisions. The measure would continue a general prohibition against direct assistance for Cuba (Section 7007) and continue a requirement that any assistance would only be provided through the regular notification procedures of the Committees on Appropriations (Section 7015(f)). The bill (Section 7034(g)(6)) and the report would transfer \$2 million in ESF appropriated for Cuba to the National Endowment for Democracy for democracy programs. The report recommends \$28.789 million for Cuba broadcasting, \$390,000 less than the request, and requires the Broadcasting Board of Governors to submit a multi-year strategic plan for broadcasting to Cuba.

On July 7, 2010, Cuba’s Catholic Church announced that Cuban authorities would free 52 political prisoners, with 5 to be released soon and 47 others over the next three to four months. Secretary of State Clinton said that the Church’s announcement of the prisoner release was a “positive sign” and that the United States welcomed it.

On July 5, 2010, the independent Cuban Commission on Human Rights and National Reconciliation (CCDHRN) documented in its July 5, 2010, report that Cuba held at least 167 political prisoners, down significantly from the 201 prisoners documented in January 2010. The figures reflect a continuing decline from previous years. Despite the reduction in the number of political prisoners, the group maintains that the overall human rights situation has not improved, with the government adopting lower-profile tactics of political repression, including arbitrary short-term detentions and other forms of harassment or intimidation.

On June 30, 2010, the House Agriculture Committee reported out (by a vote of 25-20) H.R. 4645 (Peterson). The bill would lift all restrictions on travel to Cuba; define the term “payment of cash in advance” for U.S. agricultural sales to Cuba under the Trade Sanctions Reform and Export Enhancement Act of 2000 (TSRA) as the payment by the purchaser prior to the transfer of title, and release of control, of such commodity or product to the purchaser; and authorize direct transfers between Cuban and U.S. financial institutions executed in payment for a product authorized for sale under TSRA.

On June 30, 2010, Amnesty International published a report, *Restrictions on Freedom of Expression in Cuba*, which concluded that the Cuban government “continues to resort to repressive tactics and criminal proceeding to restrict and punish the free expression of opinions.” (See the report at <http://www.amnesty.org/en/library/info/AMR25/005/2010/en>.)

On June 17, 2010, Secretary of State Clinton met with family members of USAID subcontractor Alan Gross, imprisoned in Cuba since December 2009, and issued a statement expressing deep concern about his welfare and poor health. The Secretary maintained that his continued detention “is harming U.S.-Cuba relations.”

On June 4, 2010, the Senate Committee on Armed Services reported the National Defense Authorization Act for FY2011, S. 3454 (S.Rept. 111-201), with a provision in Section 1236 that would require a report on any connections between Cuba and drug trafficking organizations; any support to Cuba provided by Bolivia, Ecuador, or Venezuela; any agreements between Cuba and

countries on the state sponsors of terrorism list; and any activities by Cuba to develop any biological or cyber warfare capabilities.

On April 29, 2010, the Senate Foreign Relations Committee majority issued a staff report that concluded that Radio and TV Martí “continue to fail in their efforts to influence Cuban society, politics, and policy.”

On March 24, 2010, President Obama issued a statement expressing deep concern about the human rights situation in Cuba, including the death of Orlando Zapata Tamayo, the repression of the Ladies in White (Damas de Blanco) human rights organization, and increased harassment of those who dare to express the desires of their fellow Cuban citizens. He asserted that these events underscore that “Cuban authorities continue to respond to the aspirations of the Cuban people with a clenched fist.” The President called for the end of repression, the immediate and unconditional release of all political prisoners, and respect for the basic rights of the Cuban people. (See the statement at <http://www.whitehouse.gov/the-press-office/statement-president-human-rights-situation-cuba>.)

On March 18, 2010, the Senate approved S.Con.Res. 54 (Nelson, Bill) by unanimous consent. The resolution recognized the life of Orlando Zapata Tamayo, who died on February 23, 2010, in the custody of the Cuban government, and called for a continued focus on the promotion of internationally recognized human rights in Cuba.

On March 16-17, 2010, Cuban security forces and government-orchestrated mobs forcefully broke up protests of the Ladies in White human rights organization consisting of the female relatives of political prisoners.

On March 11, 2010, the House Committee on Agriculture held a hearing to review U.S. agricultural sales to Cuba.

On March 11, 2010, the State Department released its 2009 human rights report on Cuba, stating that the Cuban government continued to deny its citizens basic human rights and committed numerous and serious abuses. (See <http://www.state.gov/g/drl/rls/hrrpt/2009/wha/136108.htm>.)

On March 3, 2010, the House Committee on the Judiciary held a hearing on the “Domestic and International Trademark Implications of HAVANA CLUB and Section 211 of the Omnibus Appropriations Act of 2009.” (See [http://judiciary.house.gov/hearings/hear\\_100303.html](http://judiciary.house.gov/hearings/hear_100303.html).) (See “Trademark Sanction.”)

On March 1, 2010, the State Department released its 2010 International Narcotics Control Strategy Report (INCSR). The Cuba chapter noted that some of Cuba’s interdiction operations were undertaken in coordination with the U.S. Coast Guard Drug Interdiction Specialist at the U.S. Interests Section in Havana. The report stated that “both nations may gain by pressing forward with expanded cooperation, especially considering Cuba’s location in the Caribbean, and the potential for the island and its territorial seas to be utilized for drug transshipments to the United States.”

On February 23, 2010, Cuban political prisoner Orlando Zapata Tamayo died after being on a hunger strike for more than 83 days. Zapata originally was arrested in March 2003 and sentenced in 2004 to three years in prison, but he was subsequently tried on further charges and was serving

a total sentence of 36 years. U.S. officials maintained that Zapata's death highlighted the injustice of Cuba's holding of more than 200 political prisoners and called for their immediate release.

On February 19, 2010, U.S. and Cuban officials met in Havana to discuss implementation of the 1994 and 1995 migration accords. This was the second round of migration talks since they were resumed in mid-2009. During the talks, U.S. officials had urged Cuban officials to provide political prisoner Orlando Zapata Tamayo all necessary medical care, and also raised the case of U.S. citizen Alan Gross detained in Cuba since early December 2009, calling for his release.

On December 16, 2009, President Obama signed into law the Consolidated Appropriations Act, 2010 (P.L. 111-117), with several Cuba provisions. These included defining the term "payment of cash in advance" for U.S. agricultural exports to Cuba; providing \$30.374 million for Cuba broadcasting (about \$2 million less than the request); and fully funding the Administration's request for \$20 million in Cuba democracy funding.

On December 4, 2009, Cuban authorities arrested an American contractor working for Development Alternatives Inc., a Bethesda-based company that had received a contract from the U.S. Agency for International Development to help support Cuban civil society organizations. After repeated requests, U.S. consular officials were allowed to visit the American on December 28. (For more, see "December 2009 Detainment of American Subcontractor" above.)

On November 19, 2009, the House Committee on Foreign Affairs held a hearing on U.S. restrictions on travel to Cuba entitled "Is it Time to Lift the Ban on Travel to Cuba?" that featured former U.S. government officials and other private witnesses.

On November 18, 2009, Human Rights Watch issued a report criticizing Cuba's human rights record under the government of Raúl Castro. According to the report, Raúl's government has kept Cuba's repressive machinery in place, with scores of political prisoners languishing in jail and the use of "draconian laws and sham trials to incarcerate scores more who have dared to exercise their fundamental freedoms." (The full report is available at <http://www.hrw.org/en/reports/2009/11/18/new-castro-same-cuba>.)

On November 6, 2009, Cuban Internet bloggers Yoaní Sánchez, Orlando Luis Pardo, and Claudia Cadelo were intercepted by state security agents while walking to participate in a march against violence. Sánchez and Pardo were beaten in the assault. The Department of State issued a statement deploring the attack, and expressed its deep concern to the Cuban government for the incident.

On October 20, 2009, the Cuban government released Nelson Alberto Aguiar Ramírez from prison following a visit to Cuba by Spanish Foreign Minister Miguel Angel Moratinos. Aguiar Ramírez was a member of the "group of 75" imprisoned in Cuba's 2003 crackdown; with his release, 53 of the original 75 remain imprisoned.

On September 17, 2009, the United States and Cuba held talks in Havana on resuming direct mail service between the two countries. The Department of State expressed satisfaction with the talks, which included discussion on issues related to the transportation, quality, and security of mail service. According to the State Department, both sides agreed that they would meet again after consultations with their governments.

On September 17, 2009, the Government Accountability Office (GAO) issued a report on the U.S. embargo on Cuba that outlined recent Administration changes to the embargo and discussed presidential and congressional authorities to ease the embargo. (U.S. GAO, "U.S. Embargo on Cuba: Recent Regulatory Changes and Potential Presidential or Congressional Action," GAO-09-951R, September 17, 2009, available at <http://www.gao.gov/new.items/d09951r.pdf>.)

On September 3, 2009, both the Treasury and Commerce Department amended the Cuba embargo regulations to implement President Obama's April 13, 2009, initiative to lift restrictions on family travel and remittances and to increase telecommunications links with Cuba. (See the Treasury Department's fact sheet on the new regulations issued by the Office of Foreign Assets Control, available at <http://www.treas.gov/press/releases/tg273.htm>, and the Commerce Department's press release on new regulations issued by the Bureau of Industry and Security, available at [http://www.bis.doc.gov/news/2009/bis\\_press09032009.htm](http://www.bis.doc.gov/news/2009/bis_press09032009.htm).)

On July 31, 2009, Cuba's Communist Party (PCC) indefinitely postponed plans to hold its sixth congress (the last was held in 1997), which was supposed to take place at the end of 2009. Some observers maintain that Cuba's poor economic situation prompted the postponement of the congress, which was supposed to deal with potential economic changes.

On July 27, 2009, the State Department acknowledged in its daily press briefing that in June it had turned off the electronic billboard at the U.S. Interests Section in Havana that had been set up in 2006 and had featured news and pro-democracy messages that irked the Cuban government. The Cuban government had taken down anti-U.S. billboards around the U.S. mission earlier this year.

On July 26, 2009, President Raúl Castro delivered a Revolutionary Day speech in which he exhorted Cubans to work idle land that is being distributed in order to increase food production and reduce Cuban food imports.

On July 22, 2009, the Senate approved S.Amdt. 1535 (Martinez) to the Senate version of the National Defense Authorization Act for FY2010, S. 1390 (Levin). The amendment added a provision to the bill requiring a report from the Director of National Intelligence on potential Cuban activities related to drug trafficking, clandestine activities in the United States, research and development for biological weapons production, and Cuba's relations with Iran, North Korea, Venezuela and several other countries. The provision became Section 1222 of the Senate version of H.R. 2647 (Skelton), which the Senate approved on July 23, substituting the language of S. 1390 as amended. Note: the House bill did not include a similar provision, and the provision was not included in the conference report on the measure.

On July 16, 2009, the House approved H.R. 3170, the FY2010 Financial Services and General Government Appropriations Act, with a provision in section 618 that provides that the term "payment of cash in advance" as used in the Trade Sanctions Reform and Export Enhancement Act of 2000 "shall be interpreted as payment before the transfer of title to, and control of, the exported items to the Cuban purchaser." The Senate version of the bill, S. 1432, reported out of committee on July 10, 2009 (S.Rept. 111-43), has an identical provision. Note: the provision ultimately was included in Division C (section 619) of the Consolidated Appropriations Act, 2010 (P.L. 111-117) enacted in December 2009.

On July 16, 2009, about 150 U.S. and Cuban military and civilian personnel took part in an emergency response drill on both sides of the perimeter of the U.S. Naval Station at Guantanamo Bay, Cuba. The annual exercises dates back to 1999.

On July 14, 2009, the first U.S.-Cuban migration talks since 2003 were held in New York.

On July 9, 2009, the House approved H.R. 3081, the FY2010 State Department, Foreign Operations, and Related Programs Appropriations Act, with several Cuba provisions. On the same day, the Senate Appropriations Committee reported out its version of the appropriations measure, S. 1434 (S.Rept. 111-44). Both bills would continue a prohibition against direct funding for the government of Cuba, require that any funding for Cuba go through the regular notification procedures of the Committees on Appropriations, and fully fund the Administration's \$20 million request for Cuba democracy projects. The House bill would fully fund the Administration's \$32.474 million for Cuba broadcasting while the Senate bill would provide \$17.474 million, prohibit funding for TV Martí broadcasts to Cuba, and require a report from the Secretary of State on various aspects of Cuba broadcasting. The Senate bill would also provide \$1 million for preliminary work on counternarcotics cooperation with Cuba while the House bill does not have a comparable provision. Note: final action was completed in Division F of the Consolidated Appropriations Act, 2010 (P.L. 111-117) enacted in December 2009. That law provided \$30.474 million for Cuba broadcasting, \$20 million for Cuban democracy projects, continued the general prohibition against direct funding for the government of Cuba, and continued the requirement that any assistance for Cuba go through the regular notification procedures of the Committees on Appropriations.

On June 17, 2009, the House Subcommittee on International Organizations, Human Rights, and Oversight of the Committee on Foreign Affairs held an oversight hearing on TV Martí.

On June 10, 2009, the House approved H.R. 2410, the FY2010 and FY2011 Foreign Relations Authorization Act, which would continue to authorize funding for radio and television broadcasting to Cuba within the International Broadcasting Operations account. During floor consideration, the House defeated H.Amdt. 182 that would have required the Secretary of State to withhold funds from the U.S. contribution to the International Atomic Energy Agency (IAEA) in an amount equal to nuclear technical cooperation provided by the IAEA in 2007 to Iran, Syria, Sudan, and Cuba.

On June 4, 2009, the FBI arrested a retired State Department employee and his wife, Walter Kendall Myers and Gwendolyn Steingraber Myers, for allegedly spying for Cuba for more than two decades. (The Myerses pled guilty to the spying charges in November 2009, and in July 2010 Kendall Myers was sentenced to life in prison while Gwendolyn Myers was sentenced to 81 months.)

On June 3, 2009, the Organization of American States (OAS) approved a consensus resolution that overturned the 1962 resolution excluding Cuba from participating in the OAS, and stated that Cuba's participation in the OAS "will be the result of a process of dialogue initiated at the request of the Government of Cuba, and in accordance with the practices, purposes, and principles of the OAS." Cuba subsequently stated that it does not want to rejoin the OAS.

In late May 2009, Cuba and the United States agreed to restart the semi-annual migration talks that had been suspended by the United States in 2004 as well as talks on direct postal service between the two countries.

On May 14, 2009, the Senate approved S.Res. 149 (Martinez) calling for the immediate release of Cuban citizens imprisoned for exercising rights associated with freedom of the press.

On April 29, 2009, the House Subcommittee on National Security and Foreign Affairs of the Committee on Oversight and Government Reform held a hearing on the “National Security Implications of U.S. Policy Toward Cuba.”

On April 27, 2009, the House Subcommittee on Commerce, Trade and Consumer Protection of the Energy and Commerce Committee held a hearing on “Examining the Status of U.S. Trade with Cuba and Its Impact on Economic Growth.”

On April 13, 2009, the Obama Administration announced several measures to ease U.S. sanctions on Cuba. Fulfilling a campaign pledge, President Barack Obama directed that all restrictions on family travel and on remittances to family members in Cuba be lifted. The Administration also announced measures to increase telecommunications links with Cuba and to expand the scope of eligible humanitarian donations through gift parcels. (For additional details, see the White House fact sheet available at [http://www.whitehouse.gov/the\\_press\\_office/Fact-Sheet-Reaching-out-to-the-Cuban-people/](http://www.whitehouse.gov/the_press_office/Fact-Sheet-Reaching-out-to-the-Cuban-people/).)

On March 11, 2009, President Obama signed into law the Omnibus Appropriations Act, 2009 (H.R. 1105, P.L. 111-8), which has three provisions intended to ease U.S. sanctions on Cuba for family travel (Section 621 of Division D), travel related to the marketing and sale of agricultural and medical exports (Section 620 of Division D), and payment terms for U.S. agricultural exports to Cuba (Section 622 of Division D).

On March 2, 2009, President Raúl Castro orchestrated a government shake-up, ousting a dozen high-ranking officials, including Foreign Minister Felipe Pérez Roque and Cabinet Secretary Carlos Lage.

On February 27, 2009, the State Department issued its 2009 International Narcotics Control Strategy Report (INCSR), which maintained that U.S.-Cuban counter-narcotics cooperation continued in 2008. (See the full INCSR report, available at <http://www.state.gov/p/inl/rls/nrcrpt/2009/index.htm>.)

On February 25, 2009, the State Department issued its 2008 human rights report on Cuba, which maintained that the Cuban government “continued to deny its citizens their basic human rights and committed numerous, serious abuses.” (See the report, available at <http://www.state.gov/g/drl/rls/hrrpt/2008/wha/119155.htm>.)

On February 2, 2009, the independent Cuban Commission on Human Rights and National Reconciliation (CCDHRN) documented at least 205 political prisoners in Cuba, down from 234 in January 2008. The Commission maintains that the government has resorted to short-term arbitrary detentions to target suspected dissidents, with more than 1,500 such detentions in 2008.

On January 22, 2009, the Government Accountability Office (GAO) issued a report citing concerns with Radio and TV Martí’s adherence to relevant laws and standards, and maintaining that its audience is small despite its broadcasts to Cuba through multiple methods. (U.S. GAO, “Broadcasting to Cuba, Actions Are Needed to Improve Strategy and Operations,” GAO-09-127, January 22, 2009, available at <http://www.gao.gov/products/GAO-09-127>.)

On January 22, 2009, Fidel Castro stated that he had reduced the number of his published essays (“Reflections of the Commander”) so as not to interfere with the authority of party or government officials, and insisted that they should not feel bound by his occasional essays or even his state of health or death. Castro also maintained that he does not expect to be in such a position to meditate and write about events when Obama’s first term has ended. (“Text of Fidel Castro’s Online Essay,” *Associated Press Newswires*, January 22, 2009.)

On January 15, 2009, during her Senate Foreign Relations Committee confirmation hearing for Secretary of State, Senator Hillary Clinton reiterated President-elect Obama’s pledge to lift restrictions on family travel and remittances as well as his position that it is not time to lift the embargo since it provides an important source of leverage for further change in Cuba. Clinton also responded to written questions for the record that the new Administration expected to undertake a review of U.S. policy toward Cuba.

On January 15, 2009, Cuba released Varela Project activist Reynaldo Labrada Peña from prison following the completion of his six-year sentence. Peña was one of the “group of 75” political prisoners who have been incarcerated since 2003. Overall, there are more than 200 political prisoners in Cuba.

On January 1, 2009, Cuba celebrated the 50<sup>th</sup> anniversary of the Cuban Revolution.

## Appendix B. For Additional Reading

### Active CRS Reports

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

CRS Report R40566, *Cuban Migration to the United States: Policy and Trends*, by Ruth Ellen Wasem.

CRS Report R40139, *Closing the Guantanamo Detention Center: Legal Issues*, by Michael John Garcia et al.

CRS Report R40754, *Guantanamo Detention Center: Legislative Activity in the 111th Congress*, by Michael John Garcia.

CRS Report R41340, *Financial Services and General Government (FSGG): FY2011 Appropriations*, coordinated by Garrett Hatch.

CRS Report R40801, *Financial Services and General Government (FSGG): FY2010 Appropriations*, coordinated by Garrett Hatch.

CRS Report RL34523, *Financial Services and General Government (FSGG): FY2009 Appropriations*, coordinated by Garrett Hatch.

CRS Report RL32826, *The Medical Device Approval Process and Related Legislative Issues*, by Erin D. Williams.

CRS Report RL33200, *Trafficking in Persons in Latin America and the Caribbean*, by Clare Ribando Seelke.

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

### Archived CRS Reports

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

CRS Report RL33622, *Cuba's Future Political Scenarios and U.S. Policy Approaches*, by Mark P. Sullivan.

CRS Report RS22742, *Cuba's Political Succession: From Fidel to Raúl Castro*, by Mark P. Sullivan.

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

CRS Report RL33819, *Cuba: Issues for the 110<sup>th</sup> Congress*, by Mark P. Sullivan.

CRS Report RL32730, *Cuba: Issues for the 109<sup>th</sup> Congress*, by Mark P. Sullivan.

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

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

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

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

CRS Report RL33499, *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 RL31258, *Suits Against Terrorist States by Victims of Terrorism*, 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.

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