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# Cuba: Déjà Vu or New Beginnings

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# Cuba: Déjà Vu or New Beginnings

By: Ryan Forrest, Hunter W. Phillips, and Magena Rodriguez\*

*That the United States has long had a strained relationship with Cuba is no secret to the international community. Most recently, this strain has been embodied in a commercial, economic and financial embargo that has been enforced by the United States since 1962. That said, focusing only on this limited stretch of history would ignore the greater context of American–Cuban relations. This paper takes a step back to conduct a historical analysis, examine the current state of relations, and to posit on the potential of future economic ties between the two nations. After a thorough examination, an overarching question emerges: Is today’s Cuba entering an era of Déjà vu all over again where the country’s increasing ties with the United States will mirror the strong American influence of the early 1900’s, or is Cuba bound for something new and distinct? Despite the temptation to assume that America’s economic and social prowess will dominate Cuban culture in the future, it seems more likely that societal and global economic factors will ensure that whatever direction Cuba takes will be on distinctly Cuban terms.*

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## I. HISTORICAL BACKGROUND

### A. *Settlement of Cuba*

Originally searching for a route to India on behalf of the Spanish crown, Christopher Columbus discovered Cuba on October 28, 1492, naming it Isla Juana, in honor of John, Prince of Asturias.<sup>1</sup> Despite the original moniker, the name Cuba, a variant of the name given to the island by its native inhabitants, eventually gained favor.<sup>2</sup> Claiming Cuba for itself, Spain then sent Diego Velazquez to establish a settlement on the island in 1511.<sup>3</sup> Within five years, the Spanish had succeeded in founding numerous cities, including Havana. They then divided Cuba into seven municipal divisions and established civil institutions including Catholicism, urbanized societies, the tobacco, mining, and sugary industries, and slavery.<sup>4</sup> Solidifying their control on the island, the Spanish then imposed severe protectionist restrictions that exclusively limited trade to other Spanish enterprises.<sup>5</sup>

However, the Spanish hunger for conquest was not limited to the acquisition of Cuba. When the Spanish discovered that the island lacked significant silver or gold deposits, they decided to focus the brunt of their attention on the treasures of the Aztec and Inca empires of Central America.<sup>6</sup> Nevertheless, while the Spanish were content to colonize and

<sup>1</sup> PHILLIP S. FONER, A HISTORY OF CUBA AND ITS RELATIONS WITH THE UNITED STATES 15, Vol. 1 (1962).

<sup>2</sup> *Id.*

<sup>3</sup> *Cuba*, ENCYCLOPEDIA BRITANNICA, <http://www.britannica.com/EBchecked/topic/145542/Cuba/233435/Cultural-institutions#toc129488> (last visited October 23, 2016).

<sup>4</sup> *See id.*; FONER, *supra* note 1, at 25, 34–35.

<sup>5</sup> FONER, *supra* note 1, at 35–39.

<sup>6</sup> FONER, *supra* note 1, at 39; *see also* ENCYCLOPEDIA BRITANNICA, *supra* note 3.

move on, pirates did not share that sentiment and instead chose to plunder the island repeatedly around 1538.<sup>7</sup>

### *B. The Seven Years' War*

Though Cuba lacked precious metals, its abundant natural resources eventually commanded increased attention from the Spanish, who put an emphasis on cultivating local agricultural industries.<sup>8</sup> This created a period of rapid economic expansion that continued until roughly 1755, when the Seven Years' War (also called the French and Indian War) broke out between most of the great powers of the time.<sup>9</sup> During the war, Spain was forced to confront the full-force of the British war machine who then expanded the scope of the conflict by invading Spanish-owned Cuba with an armada of as many as fifty (50) warships and between four thousand (4,000) and thirteen thousand (13,000) troops.<sup>10</sup> After a lengthy battle, Havana fell in August of 1762.<sup>11</sup>

Upon taking control, the British opened new avenues of trade with British territories, including the American colonies.<sup>12</sup> As a result, hundreds of previously-restricted merchant ships poured into Havana Harbor to seek a piece of Cuba's valuable sugar stockpile.<sup>13</sup> Consequently, the Cuban economy boomed.

Subsequently, at the end of the conflict, Spain traded Florida to the British in exchange for Cuba.<sup>14</sup> But, while Spain again controlled Cuba, it did not re-impose the protectionist trade restrictions that had stifled growth before the war.<sup>15</sup> This new Spanish embrace of trade facilitated a solidification of economic ties between Cuba and the American colonies.<sup>16</sup>

As time passed, however, the American Revolution occurred, and Spain became alarmed at the prospect of losing economic control of Cuba. As a result, it again imposed policies that prohibited international trade

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<sup>7</sup> MARGARITA CERVANTES-RODRIGUEZ, INTERNATIONAL MIGRATION IN CUBA: ACCUMULATION, IMPERIAL DESIGNS, AND TRANSNATIONAL SOCIAL FIELDS 44 (2011).

<sup>8</sup> RICHARD GOTT, CUBA: A NEW HISTORY 37 (2005).

<sup>9</sup> *Seven Years' War*, ENCYCLOPEDIA BRITANNICA, <http://www.britannica.com/event/Seven-Years-War> (last visited October 23, 2016); see also GOTT, *supra* note 8, at 41.

<sup>10</sup> See GOTT, *supra* note 8, at 41; see also Raphael Murillo, *Slavery and the Siege of Havana*, BERKELEY R. LATIN AM. STUD., Fall 2013, at 20.

<sup>11</sup> FONER, *supra* note 1, at 41–42; see also TED HENKEN, CUBA: A GLOBAL STUDIES HANDBOOK 49 (2008); see also Murillo, *supra* note 10, at 20.

<sup>12</sup> Murillo, *supra* note 10, at 20; see also FONER, *supra* note 1, at 42.

<sup>13</sup> See GOTT, *supra* note 8, at 42; see also DALE W. TOMICH, THROUGH THE PRISM OF SLAVERY: LABOR, CAPITAL AND WORLD ECONOMY 64 (2004).

<sup>14</sup> See GOTT, *supra* note 8, at 42.

<sup>15</sup> FONER, *supra* note 1, at 42–43.

<sup>16</sup> LOUIS E. PEREZ, CUBA AND THE UNITED STATES: TIES OF SINGULAR INTIMACY 5 (2003).

with non-Spanish entities.<sup>17</sup> These actions were highly unpopular amongst the island-dwelling Cubans, but they were not long-lived. Soon after, Spain again became embroiled in wars with both France and England, and due to the corresponding financial distress, Spain eased its trade restrictions once more.<sup>18</sup>

As they were before, the Americans were eager to take full advantage of Cuban stockpiles of sugar, molasses, rum and coffee, leading to the stark revival of the Cuban economy yet again.<sup>19</sup> The years that followed were met with similar setbacks and steps forward as the Spanish imposed, removed, and re-imposed trade restrictions multiple times in furtherance of their overall economic needs.<sup>20</sup> These fluctuations then piqued American interests; sensing an opportunity to make a purchase from the cash-strapped Spanish, President Thomas Jefferson sent an envoy to Cuba to gauge the interest of the Spanish in ceding or selling the island to the United States.<sup>21</sup> The advances were unsuccessful.

### *C. Growing Ties to America*

After fighting a difficult battle to control growth and trade in Cuba, Spain finally and fully relinquished trade restrictions in 1818.<sup>22</sup> This embrace of free trade then facilitated the development of Spain's worst fears: the Cuba-United States trade connection eventually replaced the need for Spanish commercial ties.<sup>23</sup> These developments again enticed the Americans, and in 1823, consistent with his previously expressed interest in Cuba, Thomas Jefferson confided privately in a correspondence as follows:

I candidly confess, that I have ever looked on Cuba as the most interesting addition which could ever be made to our system of States. The control which, with Florida Point, this island would give us over the Gulf of Mexico, and the countries and isthmus bordering on it, as well as all those whose waters flow into it, would fill up the measure of our political well-being.<sup>24</sup>

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<sup>17</sup> FONER, *supra* note 1, at 44, 67; PEREZ, *supra* note 16, at 7.

<sup>18</sup> PEREZ, *supra* note 16, at 7.

<sup>19</sup> *Id.*; FONER, *supra* note 1, at 68.

<sup>20</sup> PEREZ, *supra* note 16, at 6-7.

<sup>21</sup> BRENDAN SAINSBURY, CUBA 36 (2009).

<sup>22</sup> PEREZ, *supra* note 16, at 13.

<sup>23</sup> *Id.*

<sup>24</sup> Letter from Thomas Jefferson to James Monroe, President of the U.S. (Oct. 24, 1823), <http://www.let.rug.nl/usa/presidents/thomas-jefferson/letters-of-thomas-jefferson/jefl275.php>.

In fact, Jefferson told John C. Calhoun, the Secretary of War, that the United States “ought, at the first possible opportunity, to take Cuba.”<sup>25</sup> These thoughts were not limited to Jefferson though. In a letter to the U.S. Minister to Spain, then Secretary of State John Quincy Adams expounded on the likelihood that Cuba would be annexed in short order, opining that

[t]here are laws of political as well as of physical gravitation; and if an apple severed by the tempest from its native tree cannot choose but fall to the ground, Cuba, forcibly disjoined from its own unnatural connection with Spain, and incapable of self-support, can gravitate only toward the North American Union, which by the same law of nature cannot cast her off from its bosom.<sup>26</sup>

As the ties between the two nations continued to strengthen, Americans were purchasing 82 percent of Cuba’s total exports by 1877.<sup>27</sup> This economic relationship fostered close cultural connections as well, leading some travelers and thinkers of the time to ponder Cuba’s fate. English traveler Anthony Trollope speculated that “[t]he trades of the country is falling into the hands of foreigners, Havana will soon be as American as New Orleans.”<sup>28</sup>

Yet, American influence in Cuba was not the only concerning factor for the Spanish, who faced social and economic rifts on the island, some of which centered on opposition to slavery.<sup>29</sup> As unrest grew, Spain promised to take local Cuban concerns to heart.<sup>30</sup> In the end, however, the Spanish responded by increasing taxes and banning all political opposition and press.<sup>31</sup> Cubans were incensed, and passions came to a head in 1868 when sugar planter Carlos Manuel de Céspedes issued the 10<sup>th</sup> of October Manifesto, freeing his slaves and calling for independence from Spain.<sup>32</sup> As the movement spread, the number of rebellious Cubans swelled to over 12,000.<sup>33</sup> By 1869, the movement had stated its intent to abolish slavery,

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<sup>25</sup> CATHERINE DELMAS, CHRISTINE VANDAMME, DONNA SPALDING ANDREOLLE, *SCIENCE AND EMPIRE IN THE NINETEENTH CENTURY: A JOURNEY OF IMPERIAL CONQUEST AND SCIENTIFIC PROGRESS* 118 (2010).

<sup>26</sup> GOTT, *supra* note 8, at 13.

<sup>27</sup> Louis A. Perez Jr., *Cuba and the United States: Origins and Antecedents of Relations, 1760s–1860s*, 21 *UNIV. PITT.* 57, 69 (1991).

<sup>28</sup> PEREZ, *supra* note 16, at 14.

<sup>29</sup> PHILLIP S. FONER, *A HISTORY OF CUBA AND ITS RELATIONS WITH THE UNITED STATES*, 156–59, Vol. 2 (1962).

<sup>30</sup> *Id.*; see also PBS, *1868–1878: Ten Years’ War in Cuba* (last visited Oct. 12, 2016), <https://www.pbs.org/crucible/tl1.html>.

<sup>31</sup> PBS, *supra* note 30.

<sup>32</sup> FONER, *supra* note 29, at 171.

<sup>33</sup> *Id.* at 174.

and given America's then-recent war on the issue, the sentiment to support the annexation of Cuba to the United States became widespread.<sup>34</sup>

For obvious reasons, these developments were not palatable to the Spanish. Consequently, the Spanish deployed approximately 100,000 soldiers to Cuba and declared that anyone caught with a weapon would be executed.<sup>35</sup> The military occupation proved effective, and when combined with the competing visions of the revolutionaries, the death of Cespedes, and Spain's repeated promises to accede to some of the revolutionary desires, the Spaniards once again consolidated their stranglehold on power.<sup>36</sup>

However, Spanish promises to accommodate Cuban desires for autonomy went unfulfilled yet again, and Cuba remained subjugated.<sup>37</sup> This schism between words and actions eventually resulted in a number of armed conflicts.

#### *D. Struggle for Independence*

Three liberation wars were ultimately fought by the Cubans against the Spanish: the Ten Years War (1868–1878), the Little War (1879–1880) and the Cuban War of Independence (1895–1898).<sup>38</sup> In the face of these conflicts, Cuba still needed trading partners, thus commerce with the American colonies continued to flourish. Accordingly, by the mid 1890's, the United States was Cuba's main trading partner.<sup>39</sup> These ties facilitated American social dominance. According to observers of the times, Cuba was a *de facto* economic colony of the United States by the beginning of the year 1895.<sup>40</sup>

Meanwhile, a Cuban intellectual named Jose Marti, who had previously been exiled by the Spanish, began disseminating information regarding the Cuba Libre movement ("A Free Cuba") in the United States.<sup>41</sup> By the same token, as Jefferson and Adams had before, Secretary of State, James G. Blaine noted in 1881 that

that rich island, the key to the Gulf of Mexico, and the field for our most extended trade in the Western

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<sup>34</sup> GOTT, *supra* note 8, at 79; PBS, *supra* note 30.

<sup>35</sup> FONER, *supra* note 29, at 196, 261, 274; *see also* JOSE M. HERNANDEZ, CUBA AND THE UNITED STATES: INTERVENTION AND MILITARISM 1868–1933, at 12 (1993).

<sup>36</sup> *See* SAINSBURY, *supra* note 21, at 38; *see also* HERNANDEZ, *supra* note 35, at 14.

<sup>37</sup> HENKEN, *supra* note 11, at 66.

<sup>38</sup> *Cuban Independence Movement*, ENCYCLOPEDIA BRITANNICA, <http://www.britannica.com/event/Cuban-Independence-Movement#ref266526> (last visited Oct. 1, 2016).

<sup>39</sup> FONER, *supra* note 29, at 298.

<sup>40</sup> *Id.*

<sup>41</sup> *Id.* at 305.

Hemisphere, is, though in the hands of Spain, a part of the American commercial system . . . If ever ceasing to be Spanish, Cuba must necessarily become American and not fall under any other European domination.<sup>42</sup>

In February of 1895, uprisings against the Spanish were staged across the Cuban territory.<sup>43</sup> Martí himself returned to Cuba after authoring the *Manifiesto de Montecristi*, which outlined the reasons for Cuba's independence movement.<sup>44</sup> Bold as this move may have been, it led to his death shortly thereafter when he was killed in a battle against Spanish forces.<sup>45</sup> Nevertheless, Martí's image was engrained in Cuban lore and his compatriots continued on, gaining momentum in their fight for independence.

At this point the rebellion in Cuba was not the only battle Spain was fighting, as it also faced an independence movement over territories it controlled in the Philippines.<sup>46</sup> The combined burden of financing both efforts strained the Spanish. Watching closely, the United States recognized an opportunity to use Spain's crisis to its advantage and in 1897 again offered to buy Cuba.<sup>47</sup> The Spanish emphatically rejected the offer once more.<sup>48</sup>

Shortly after Spain's rejection of the American offer, a riot by Spanish loyalists broke out in Havana, and the American Consulate informed Washington D.C. that they possessed legitimate fears for the safety of Americans in the area.<sup>49</sup> As a result, the United States deployed the USS *Maine* battleship to Havana in late January of 1898.<sup>50</sup> Nearly two weeks after its arrival, on February 15, 1898, an unexpected explosion tore apart the USS *Maine* in the middle of the night, killing 260 sleeping crew members and sinking the ship.<sup>51</sup> Although the cause of the explosion

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<sup>42</sup> Jerry A. Sierra, *José Martí: Apostle of Cuban Independence*, HISTORYOF CUBA, <http://www.historyofcuba.com/history/marti/marti.htm> (last visited Oct. 10, 2016).

<sup>43</sup> CLIFFORD L. STATEN, *THE HISTORY OF CUBA* 36 (2005).

<sup>44</sup> ALFRED J. LOPEZ, *JOSE MARTI: A REVOLUTIONARY LIFE* 289 (2014).

<sup>45</sup> STATEN, *supra* note 43, at 36.

<sup>46</sup> *THE WAR OF 1898 AND U.S. INTERVENTIONS*, AN ENCYCLOPEDIA 424 (Benjamin R. Beede ed., 2d ed. 2013) [hereinafter *Beede*].

<sup>47</sup> FRANK R. VILLAFANA, *EXPANSIONISM: ITS EFFECTS ON CUBA'S INDEPENDENCE* 205 (2011).

<sup>48</sup> MARK EATON BYRNES, *JAMES K. POLK: A BIOGRAPHICAL COMPANION* 48 (2001).

<sup>49</sup> DAVID M. PLETCHER, *THE DIPLOMACY OF TRADE AND INVESTMENT: AMERICAN ECONOMIC EXPANSION IN THE HEMISPHERE, 1865–1900*, at 337 (1998).

<sup>50</sup> *Dark Suspicions Cling to Ghost of U.S.S. Maine*, BOCA RATON NEWS, Feb. 8, 1998, at 10A.

<sup>51</sup> LINDLEY M. GARRISON, *FINAL REPORT ON REMOVING THE U.S.S. "MAINE" FROM HARBOR OF HABANA CUBA: LETTER FROM THE SECRETARY OF WAR, TRANSMITTING WITH A LETTER FROM THE CHIEF OF ENGINEERS, FINAL REPORT OF A SPECIAL BOARD OF ENGINEER*

remains a mystery to this day, the first analysis by the United States indicated that it was due to a mine placed underneath the ship.<sup>52</sup> Afterwards, The American media picked up the USS Maine story and ran it with limited information, leading to the wide dissemination of a number of sensationalized theories regarding the explosion.<sup>53</sup>

Eventually, a groundswell of negative opinions toward the Spanish formed in the United States, and on April 11, 1898, President McKinley asked Congress for approval to send troops to Cuba to end hostilities between the Spanish and the native-Cubans.<sup>54</sup> War was declared soon after.<sup>55</sup> This plunge into conflict was not without a counterbalance though, as Henry M. Teller boot-strapped an amendment to the joint resolution of Congress that prevented the United States from annexing Cuba and recognized the sovereignty of the Cuban people.<sup>56</sup> This became known as the Teller Amendment.<sup>57</sup>

In short order, American ships moved into place to blockade Cuban ports, and American troops poured onto the island.<sup>58</sup> Once there, they combined forces with the already-entrenched Cubans and set their sights on dismantling the Spanish military ranks.<sup>59</sup> These combined forces eventually won the day over the Spanish.<sup>60</sup> On December 10, 1898, both Spain and the United States signed the Treaty of Paris and Spain renounced all rights to Cuba.<sup>61</sup> Notably, the Cubans were excluded from nearly the entire process.<sup>62</sup>

This exclusion portended the fates of Cubans on the island. The Spanish had relinquished their interests in Cuba and handed de-facto control to the United States.<sup>63</sup> Almost immediately after, the United States

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OFFICERS ON RAISING AND REMOVING THE WRECK OF THE U. S. BATTLESHIP "MAINE" FROM THE HARBOR OF HABANA, CUBA, H.R. REP. No. 480, at 7 (2nd Sess. 1914).

<sup>52</sup> *Id.*

<sup>53</sup> *Id.*

<sup>54</sup> GERHARD PETERS, JOHN T. WOOLLEY, MICHAEL NELSON, *THE PRESIDENCY: A TO Z* 377 (2012).

<sup>55</sup> *Id.*

<sup>56</sup> J. Res. 24, 55th Cong., 30 Stat. 738 (1898).

<sup>57</sup> CHRIS J. MAGOC & DAVID BERNSTEIN, *IMPERIALISM AND EXPANSIONISM IN AMERICAN HISTORY: A SOCIAL, POLITICAL, AND CULTURAL ENCYCLOPEDIA AND DOCUMENT COLLECTION* 767-68 (2016).

<sup>58</sup> Beede, *supra* note 46, at 287 (2013).

<sup>59</sup> *Id.*

<sup>60</sup> *Toral Surrenders*, *THE CLINTON MIRROR*, July 23, 1898, at 6, <https://news.google.com/newspapers?nid=8Z0Dsp3hPRYC&dat=18980723&printsec=frontpage&hl=en>.

<sup>61</sup> A Treaty of Peace Between the United States and Spain, U.S.-Spain, part I, Dec. 10, 1898, S. EXEC. DOC. NO. 62 (1899).

<sup>62</sup> ANDREW P. NAPOLITANO, *THEODORE AND WOODROW: HOW TWO AMERICAN PRESIDENTS DESTROYED CONSTITUTIONAL FREEDOM* 189 (2012).

<sup>63</sup> *Id.*

installed Jon R. Brooke, a major general in the United States Army, as the Governor of Cuba and instituted a liberal military oversight system.<sup>64</sup>

### *E. The Platt Amendment*

In 1901, facing increased feelings of unease from the American public for leaving a standing occupying force in Cuba, Congress passed the Platt Amendment which allowed the United States to withdraw its troops from Cuba.<sup>65</sup> Notably, its approval hinged on Cuba's simultaneous approval of certain portions of the law allowing the United States to intervene in Cuban affairs for the "preservation of Cuban independence, [and] the maintenance of a government adequate for the protection of life, property, and individual liberty . . . ."<sup>66</sup> Notably, the Platt Amendment also leased Guantanamo Bay to the United States for the nominal annual fee of \$2,000 in gold.<sup>67</sup>

Despite American troops having withdrawn because of the agreement, their absence was not long-lasting. Instead, using its newly granted authority to intervene in Cuban affairs, the United States was forced to stabilize the island in 1906 with the collapse of Cuban President Tomas Estrada Palma's administration.<sup>68</sup>

Afterwards, Secretary of War (and future American president) William Howard Taft declared himself Provisional Governor of Cuba on September 29, 1906.<sup>69</sup> Four years later, following the election of Jose Miguel Gomez, the occupation was ended, and the Gomez administration was judged to be sufficient to provide the necessary stability in Cuba.<sup>70</sup> In the years that followed, the United States intervened in Cuba a number of times as in an attempt to stabilize the Cuban government.<sup>71</sup> Unfortunately, the instability could not be remedied and eventually resulted in an economic depression.<sup>72</sup> As a result, in 1934 the Cuban government was

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<sup>64</sup> See VILLAFANA, *supra* note 47, at 175.

<sup>65</sup> Platt Amendment, ch. 803, 31 STAT. 895, 897 (1901).

<sup>66</sup> *Id.*

<sup>67</sup> HOWARD BALL, THE USA PATRIOT ACT OF 2001: BALANCING CIVIL LIBERTIES AND NATIONAL SECURITY 146 (2004); LOUIS A. PÉREZ JR., THE STRUCTURE OF CUBAN HISTORY: MEANINGS AND PURPOSE OF THE PAST 168 (2013).

<sup>68</sup> VILLAFANA, *supra* note 47, at 194.

<sup>69</sup> See SEAN DENNIS CASHMAN, AMERICA IN THE AGE OF THE TITANS: THE PROGRESSIVE ERA AND WORLD WAR I 453 (1988); see also MAURICE ZEITLIN & ROBERT SCHEER, CUBA: TRAGEDY IN OUR HEMISPHERE 35 (1963).

<sup>70</sup> CASHMAN, *supra* note 69, at 453.

<sup>71</sup> JULES ROBERT BENJAMIN, THE UNITED STATES AND CUBA: HEGEMONY AND DEPENDENT DEVELOPMENT, 1880–1934, at 21–23 (1977).

<sup>72</sup> *Id.* at 29.

overthrown by a right wing and military coalition led by Fulgencio Batista Zaldívar.<sup>73</sup>

### *F. Batista's Reign*

Following the coup, Batista was originally content to remain in the shadows behind a series of weak Presidents, but he could not contain his ambitions forever: in 1940 he was elected President after campaigning with the endorsement of the Cuban communist party.<sup>74</sup> After serving his term, he stepped down and resumed wielding power as a shadow administrator.<sup>75</sup> Nevertheless, in 1952, he organized a second bloodless coup three months before another presidential election was set to take place.<sup>76</sup> The sitting President at the time, Carlos Prío Socarras, did little to rebut the mutiny, thereby allowing Batista to depose him and take direct control of the state once more.<sup>77</sup>

Batista's subsequent reign was defined by opposing contrasts. While the country was marked by economic corruption, wages rose significantly.<sup>78</sup> The average industrial salary was higher than some western European nations, the Cuban health system was cutting edge, and a large middle class came into existence that was replete with rights and protections of the modern era, such as the eight-hour workday.<sup>79</sup> Moreover, Batista's Cuba had a high literacy rate and the fifth highest number of televisions per capita in the world.<sup>80</sup>

At this time, 60% of Cuba's exports and 80% of its imports were attributed to the United States.<sup>81</sup> Even so, a large portion of the country remained in abject poverty, and those that had reached the middle class grew discontented. Furthermore, Cuban laws instituting stifling taxes and favoring workers at the expense of industrial advancements soon contributed to an economic stagnation.<sup>82</sup> These problems would eventually lead to Batista's demise.

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<sup>73</sup> RAMÓN L. BONACHEA & MARTA SAN MARTIN, *THE CUBAN INSURRECTION: 1952–1959*, at xvi–xv (1974).

<sup>74</sup> HARRIS M. LENTZ, *HEADS OF STATES AND GOVERNMENTS SINCE 1945*, at 203 (2014).

<sup>75</sup> *Id.*

<sup>76</sup> BONACHEA & SAN MARTIN, *supra* note 73, at 1.

<sup>77</sup> *See id.* at xvi.

<sup>78</sup> PAUL H. LEWIS, *AUTHORITARIAN REGIMES IN LATIN AMERICA: DICTATORS, DESPOTS, AND TYRANTS* 186 (2006).

<sup>79</sup> *Id.*

<sup>80</sup> *Id.*

<sup>81</sup> FRANCISCO LÓPEZ SEGRERA, *THE UNITED STATES AND CUBA: FROM CLOSEST ENEMIES TO DISTANT FRIENDS* 9 (2017).

<sup>82</sup> THOMAS F. O'BRIEN, *THE REVOLUTIONARY MISSION: AMERICAN ENTERPRISE IN LATIN AMERICA, 1900–1945*, at 327 (1999).

### G. Castro's Revolution

After Batista's coup, a law school graduate and aspiring politician named Fidel Castro filed suit against Batista for his violations of the Cuban constitution.<sup>83</sup> However, the courts ruled that the revolution was a lawful source of power.<sup>84</sup> Taking note, Castro, along with his brother, Raúl, began to build revolutionary cells to overthrow the Batista government through force.<sup>85</sup> As a result of these efforts, on July 26, 1953, Castro led 95 men in an attack on the government-held Moncada military barracks in an attempt to start widespread armed insurrection.<sup>86</sup> The Cuban government easily defeated the attack, and Castro was captured and subsequently tried, convicted, and sentenced to 15 years in prison.<sup>87</sup>

Despite the length of his sentence, Castro was released only two years later in 1955 and ultimately went into self-imposed exile in Mexico.<sup>88</sup> It was there that he met Ernesto "Che" Guevara.<sup>89</sup> Together, Castro and Guevara plotted to return to Cuba and overthrow Batista, eventually setting out to accomplish their goals in 1956 with a unit of approximately 80 guerrilla fighters.<sup>90</sup> Though Batista's forces crushed the original advance, neither Castro nor Guevara were captured, and they escaped to the mountainous regions of southeastern Cuba to regroup.<sup>91</sup>

From their safe haven, Castro and Guevara plotted their next moves and based their strategies on guerilla warfare tactics.<sup>92</sup> Meanwhile, opposition to Batista spread, and Castro again led offensive maneuvers against the Cuban forces. Batista's forces responded brutally by executing rebels and—in some circumstances—practicing torture to extract desired information.<sup>93</sup> Batista also instituted Operation Verano, a full-blown attack against the rebels, which consisted of bombing the forested and mountainous areas of southeastern Cuba, and sending 10,000 troops to subdue Castro's forces.<sup>94</sup> This plan, however, was doomed for failure

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<sup>83</sup> RAMÓN L. BONACHEA & MARTA SAN MARTIN, *THE CUBAN INSURRECTION: 1952–1959*, at 14 (2011).

<sup>84</sup> *Id.*

<sup>85</sup> LEYCESTER COLTMAN, *THE REAL FIDEL CASTRO* 66 (2008).

<sup>86</sup> BONACHEA & SAN MARTIN, *supra* note 73, at 20.

<sup>87</sup> *Id.* at 28.

<sup>88</sup> Anthony DePalma, *Fidel Castro, Cuban Revolutionary Who Defied U.S., Dies at 90*, N.Y. TIMES, Nov. 26, 2016, at A1.

<sup>89</sup> FRAN REES, *FIDEL CASTRO: LEADER OF COMMUNIST CUBA* 48 (2006).

<sup>90</sup> *Id.* at 49.

<sup>91</sup> ELLIOT JOHNSON, DAVID WALKER, DANIEL GRAY, *HISTORICAL DICTIONARY OF MARXISM* 108 (2014).

<sup>92</sup> TAD SZULC, *THE UNITED STATES AND THE CARIBBEAN* 30 (1971).

<sup>93</sup> RENÉ DE LA PEDRAJA, *WARS OF LATIN AMERICA, 1948–1982: THE RISE OF THE GUERRILLAS* 58 (2013).

<sup>94</sup> JOHNSON, WALKER, GRAY, *supra* note 91, at 109.

because Castro possessed superior knowledge of the mountainous terrain, allowing him to evade the airstrikes and to thwart the onslaught of the army attack. With each battle, Castro's legend grew and his forces gained strength.<sup>95</sup>

Nevertheless, Batista was not without friends as the United States had long been shipping arms to the Batista government, including rifles, grenades, rockets, tanks, machine guns, and bombs.<sup>96</sup> Yet, as the war dragged on, the United States began to doubt the return on its investment, and in March of 1958 it suspended all arms trading with Cuba.<sup>97</sup> Moreover, as the chances of a government victory waned, the general that Batista had originally dispatched to quell Castro's rebellion, Eulogio Cantillo, defied his orders by entering into a secret agreement with Castro, promising him that upon victory, Batista would be tried in a court of law as a war criminal.<sup>98</sup>

This promise would never come to be as Batista was able to sense his impending defeat. As a result, on January 1, 1959, he fled Cuba with more than \$300,000,000 dollars in tow.<sup>99</sup> Castro, incensed at Batista's escape, set his sights on Havana, eventually arriving as a conqueror later that week.<sup>100</sup>

Manuel Urrutia Lleo was then proclaimed the provisional president, and Castro—much like Batista before him—assumed a role behind the scenes.<sup>101</sup> The similarities, however, stopped there. Soon thereafter, the Cuban congress was dismissed, and a ban on political parties was enacted despite the repeated claims that elections would be held.<sup>102</sup> The newly empowered regime also set out to try many former Batista officials, resulting in a number of farcical trials and military executions.<sup>103</sup>

Reacting to concerns that the trials of these officials were unfair, Castro stated that “revolutionary justice is not based on legal precepts, but on moral conviction.”<sup>104</sup> Meanwhile, the rights of Cuban citizens also began to be culled when a system of secretive neighborhood watch networks, known as Committees for the Defense of the Revolution, were established to ensure loyalty to the regime.<sup>105</sup> This system of spying

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<sup>95</sup> *Id.*

<sup>96</sup> CARMELO MESA-LAGO, *REVOLUTIONARY CHANGE IN CUBA* 46 (1972).

<sup>97</sup> PATRICK J. HANEY, WALT VANDERBUSH, *THE CUBAN EMBARGO: THE DOMESTIC POLITICS OF AN AMERICAN FOREIGN POLICY* 13 (2005).

<sup>98</sup> COLTMAN, *supra* note 85, at 136–37.

<sup>99</sup> SERGIO DIAZ-BRIQUETS, *CORRUPTION IN CUBA: CASTRO AND BEYOND* 83 (2010).

<sup>100</sup> ROBERT E. QUIRK, *FIDEL CASTRO* 210–11 (1995).

<sup>101</sup> *Id.* at 223, 227.

<sup>102</sup> *Id.* at 223.

<sup>103</sup> RITA J. MARKEL, *FIDEL CASTRO'S CUBA (REVISED EDITION)* 79 (2012).

<sup>104</sup> *Id.*

<sup>105</sup> TED A. HENKEN ET AL., *CUBA* 89 (2013).

informants fostered a culture of paranoia and terror as those accused of harboring anti-Castro sentiments, hatching plans to defect, or to overthrow the government were jailed or sentenced to hard labor.<sup>106</sup> Additionally, existing media outlets were either shut down or replaced with government run entities.<sup>107</sup>

Castro then made his hold on power official in February of 1959 when he was sworn in as the Prime Minister of Cuba.<sup>108</sup> During his early years, he intentionally concealed his Communist/Marxist ideology in favor of a more democratic façade that he believed would help gain supporters to his cause.<sup>109</sup> Eventually, however, his true colors began to show. The United States, who had watched the proceedings with a keen eye, thereafter determined that Castro's leadership was not conducive to American interests in the region.<sup>110</sup> Thus, relations between the United States and Cuba "fluctuated between open hostility and quiet estrangement" in the years immediately following the Cuban revolution, and the CIA and the Eisenhower Administration began to fund various movements opposed to the Castro government.<sup>111</sup>

Coinciding with these developments, in February of 1960, a French supply ship that was docked in Havana to unload firearms mysteriously exploded.<sup>112</sup> Despite the inherently dangerous nature of the cargo being unloaded and the lack of conclusive proof as to the cause of the incident, the Castro government aggressively set their sights on a single entity to blame: the United States.<sup>113</sup>

Within the same month, the Soviet Union signed a trade agreement with Cuba, agreeing to buy sugar in exchange for Cuba's purchase of Soviet crude oil.<sup>114</sup> The United States, currently engaged in the Cold War, reacted by enacting a series of policies aimed at crippling the Cuban

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<sup>106</sup> DePalma, *supra* note 88, at A1.

<sup>107</sup> LILLIAN GUERRA, VISIONS OF POWER IN CUBA: REVOLUTION, REDEMPTION, AND RESISTANCE, 1959–1971, at 163 (2012).

<sup>108</sup> *Fidel Castro*, ENCYCLOPEDIA BRITANNICA, <http://www.britannica.com/biography/Fidel-Castro> (last visited Nov. 29, 2016).

<sup>109</sup> Tad Szulc, *Fidel Castro's Years as a Secret Communist*, N.Y. TIMES, Oct. 19, 1986, <http://www.nytimes.com/1986/10/19/magazine/fidel-castro-s-years-as-a-secret-communist.html?pagewanted=all>.

<sup>110</sup> THOMAS C. WRIGHT, LATIN AMERICA IN THE ERA OF THE CUBAN REVOLUTION 58 (2001).

<sup>111</sup> See Linda R. Crane, *Cuba Revisited: From Revolution to Evolution*, 12 SEATTLE J. SOC. JUST. 872, 885 (2014); see also AVIVA CHOMSKY, A HISTORY OF THE CUBAN REVOLUTION 77 (2010).

<sup>112</sup> LESLIE BETHEL, CUBA: A SHORT HISTORY 99 (1985).

<sup>113</sup> *Id.*

<sup>114</sup> JORGE F. PEREZ-LOPEZ, THE ECONOMICS OF CUBAN SUGAR 137 (1991); VICTOR BULMER-THOMAS, THE ECONOMIC HISTORY OF THE CARIBBEAN SINCE THE NAPOLEONIC WARS 433, nn.15 (2012).

economy. First, the United States advised American-owned oil refiners in Cuba to refrain from refining Soviet crude.<sup>115</sup> This sparked a back-and-forth between the American and Cuban governments.

First, Cuba retaliated by nationalizing all American refineries on the island.<sup>116</sup> Next, the United States dramatically cut the Cuban sugar quota.<sup>117</sup> Without hesitation, Cuba then nationalized the remaining bulk of American businesses and privately owned land.<sup>118</sup> Seeing no other option, in October of 1960, the United States imposed a prohibition against all trade except food and medicine.<sup>119</sup> Continuing that theme, in January of 1961, President Eisenhower severed all diplomatic relations with Cuba shortly before leaving office.<sup>120</sup>

#### *H. Kennedy and Cuba*

As President Eisenhower exited, the Kennedy administration took over. Almost immediately, President Kennedy authorized what became one of the largest military and foreign policy blunders in American history—the Bay of Pigs invasion.<sup>121</sup> Here, the American government, through the Central Intelligence Agency, planned an invasion of American-trained Cuban exiles with the goal of toppling the Castro government. The mission was doomed, however, by a mixture of poor planning and a lack of support.<sup>122</sup> Within two days of launching an invasion in Playa Giron, all the fighters were surrounded and captured.<sup>123</sup> Adding insult to injury, they were publicly interrogated (in some humiliating instances, by Castro himself), and they were eventually sent back to the United States in exchange for food, medicine, and money.<sup>124</sup> This intensified the divide between Cuba and the United States and resulted in a public relations firestorm for President Kennedy.<sup>125</sup>

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<sup>115</sup> HELEN OSIEJA, ECONOMIC SANCTIONS AS AN INSTRUMENT OF U.S. FOREIGN POLICY: THE CASE OF THE U.S. EMBARGO AGAINST CUBA 71 (2006).

<sup>116</sup> *Id.*

<sup>117</sup> *Id.*

<sup>118</sup> WRIGHT, *supra* note 110, at 58; *see also* RICHARD PEET, ELAINE HARTWICK, THEORIES OF DEVELOPMENT, THIRD EDITION: CONTENTIONS, ARGUMENTS, ALTERNATIVES 213 (2015).

<sup>119</sup> BULMER-THOMAS, *supra* note 114, at 433.

<sup>120</sup> DANIEL F. SOLOMON, BREAKING UP WITH CUBA: THE DISSOLUTION OF FRIENDLY RELATIONS BETWEEN WASHINGTON AND HAVANA, 1956–61, at 229 (2011).

<sup>121</sup> *Bay of Pigs Invasion*, ENCYCLOPEDIA BRITANNICA, <http://www.britannica.com/event/Bay-of-Pigs-invasion> (last visited Nov. 30, 2016).

<sup>122</sup> BALLARD C. CAMPBELL, DISASTERS, ACCIDENTS, AND CRISES IN AMERICAN HISTORY: A REFERENCE GUIDE TO THE NATION'S MOST CATASTROPHIC EVENTS 308 (2008).

<sup>123</sup> *Id.*

<sup>124</sup> ENCYCLOPEDIA BRITANNICA, *supra* note 121; *see also* ROBERT E. QUIRK, FIDEL CASTRO 375–76 (1995).

<sup>125</sup> CAMPBELL, *supra* note 122, at 308–309.

Thereafter, in December of 1961, Castro declared himself to be a Marxist–Leninist, and stated that Cuba would officially operate under a Communist regime.<sup>126</sup> This provided the necessary motivation for the Kennedy administration to redouble their efforts regarding Cuba. Most pertinently, President Kennedy authorized Operation Mongoose, which was a covert sabotage campaign aimed at targeting both the Castro government and Castro himself.<sup>127</sup>

Kennedy also imposed a formal and complete embargo on all trade, travel, and financial interaction with Cuba.<sup>128</sup> This embargo is still in effect today, and its effects were strengthened by the passage of multiple congressional acts such as the Cuban Democracy Act of 1992 and the Cuban Liberty and Democratic Solidarity Act of 1996.<sup>129</sup> Furthermore, Cuba was added to the Department of State’s State Sponsors of Terrorism List, which precluded financial entities doing business in the United States from interacting with Cuba as a result of punitive economic reprisals.<sup>130</sup>

All things considered, these hostile relations resulting from the Cuban Embargo resembled nothing more than a mere childhood squabble in comparison to the events of 1962 when an American reconnaissance plane detected the secret installation of Soviet–controlled medium range nuclear ballistic missiles in Cuba.<sup>131</sup> The missiles had been installed as a counter–balance to American nuclear weapons that had been in Eastern Europe at the time.<sup>132</sup> Facing what it considered as an existential threat, the United States immediately instituted a naval quarantine to keep Soviet ships from supplying the island with more armaments.<sup>133</sup> As it turned out, Cuba had accepted the missiles in secrecy; upon their discovery, Castro urged the Soviet Union to attack the United States to prevent the possibility of an

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<sup>126</sup> IRVING LOUIS HOROWITZ & JAIME SUCHLICKI, *CUBAN COMMUNISM 1959–2003*, at 71 (1995).

<sup>127</sup> THOMAS LEONARD, JURGEN BUCHENAU, KYLE LONGLEY, GRAEME MOUNT, *ENCYCLOPEDIA OF U.S. – LATIN AMERICAN RELATIONS* 685 (2013).

<sup>128</sup> HANEY & VANDERBUSH, *supra* note 97, at 18.

<sup>129</sup> Cuban Democracy Act of 1992, Pub. L. No. 102–484, 106 Stat. 2575 (1992) (codified at 22 U.S.C.S. §§ 6001–10 (1993)); The Cuban Liberty and Democratic Solidarity (Libertad) Act of 1996 (Helms–Burton Act), Pub. L. 104–114, 110 Stat. 785, (codified at 22 U.S.C. §§ 6021–6091).

<sup>130</sup> See ARON T. URLICH, *FOCUS ON CUBA: CURRENT ISSUES AND DEVELOPMENTS*, 31 (2008); see also Portia Siegelbaum, *What Cuba would gain by dropping off U.S. terror list*, CBS NEWS (Apr. 10, 2015 5:24 AM), <https://www.cbsnews.com/news/cuba-gains-if-obama-removes-us-state-sponsors-of-terrorism-designation/>.

<sup>131</sup> *Cuban Missile Crisis*, *ENCYCLOPEDIA BRITANNICA*, <https://www.britannica.com/event/Cuban-missile-crisis> (last visited Nov. 30, 2016).

<sup>132</sup> THE CUBAN MISSILE CRISIS REVISITED 140 (J. Nathan ed. 2016).

<sup>133</sup> R. CONRAD STEIN, *CUBAN MISSILE CRISIS: IN THE SHADOW OF NUCLEAR WAR* 58 (2008).

invasion of the island.<sup>134</sup> Fortunately, this threat never materialized. Ultimately, the Soviet Premier, Nikita Khrushchev, excluded Castro from negotiations regarding the nuclear weapons in Cuba, wherein the Soviets agreed to remove the missiles in return for the extraction of similar American nuclear weapons that had been placed in Turkey.<sup>135</sup>

In 1963, due to the growing concern over the narrow application of the Cuban Import Regulations—specifically the failure to address third-country imports of Cuban goods or goods that contained Cuban materials from third countries and failure to prevent U.S. citizens of U.S. owned subsidiaries in third countries from trading with Cuba—the administration enacted the Cuban Assets Control Regulations (“CACR”).<sup>136</sup> The law strengthened the embargo by broadening prohibitions on trade with Cuba.<sup>137</sup> In fact, with a few exceptions,<sup>138</sup> the law prohibited virtually all unlicensed commercial, financial, and trade transactions with Cuba or a Cuban national by any person, wherever located, subject to U.S. jurisdiction.<sup>139</sup> It also put a total freeze on all property owned by Cuba or a Cuban national that is subject to the jurisdiction of the United States.<sup>140</sup>

Importantly, the embargo was not meant to be punitive, but rather to pressure the Cuban government to introduce democracy and a free market economy to the Cuban people.<sup>141</sup> The underlying logic of the embargo was grounded in four aspirations:

- 1) that the embargo would severely hurt the Cuban economy,
- 2) that Fidel Castro and his government would of their own volition react to a severe deterioration of the economy by implementing desired changes, or else,
- 3) that they would be forced to do so by the threat of popular discontent, and
- 4) that no sizable external source(s) of

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<sup>134</sup> Letter from Fidel Castro to Nikita Khrushchev (Oct. 26, 1962), [https://nsarchive2.gwu.edu/nsa/cuba\\_mis\\_cri/621026%20Castro%20Letter%20to%20Khrushchev.pdf](https://nsarchive2.gwu.edu/nsa/cuba_mis_cri/621026%20Castro%20Letter%20to%20Khrushchev.pdf).

<sup>135</sup> KLAUS P. FISCHER, *AMERICAN IN WHITE BLACK AND GRAY: A HISTORY OF THE STORMY 1960'S* 87–88 (2007).

<sup>136</sup> ESTEBAN MORALES DOMINGUEZ & GARY PREVOST, *UNITED STATES – CUBAN RELATIONS: A CRITICAL HISTORY* 73 (2008).

<sup>137</sup> *See id.*

<sup>138</sup> *See* 31 C.F.R. §§ 515.525, 515.560, 515.570 (Exceptions include travel related transactions, remittances, exportation of a limited set of items, and importation or exportation of information and informational materials).

<sup>139</sup> 31 C.F.R. §§ 515.201(a), 515.204; *see also* MATIAS F. TRAVIESO-DIAZ, *The Laws and Legal System of a Free-market Cuba: A Prospectus for Business*, 18 (1997); *see also* MORALES DOMINGUEZ & PREVOST, *supra* note 136, at 73.

<sup>140</sup> 31 C.F.R. §§ 515.201(b); *see also* MORALES DOMINGUEZ & PREVOST, *supra* note 136, at 73.

<sup>141</sup> Antonio Jorge, *The U.S. Embargo and the Failure of the Cuban Economy*, 4 (Inst. Cuban & Cuban Am. Stud., Occasional Paper No. 28, 2000).

resources could counterbalance the expected effects of the embargo.<sup>142</sup>

Following the Cuban missile crisis, dissent aimed at Castro's government grew both abroad and within Cuba. As a result, in 1965, the Castro government temporarily allowed what would become known as the "Freedom Flights" program, wherein nearly 300,000 people were allowed to leave Cuba for the United States.<sup>143</sup> While the Castro government officially allowed people to leave, there was often a wait between approval to leave the country and the actual conduction of the Freedom Flights due to the long lists of those who wished to flee communist Cuba.<sup>144</sup> During that time, many of those who signed up were persecuted and harassed.<sup>145</sup>

### *I. Carter's Rollbacks*

As time passed, relations with Cuba were deemphasized as the Vietnam War and the cultural tribulations of the 1960's and 70's came to the forefront. Consequently, President Carter took office in 1977 when congressional chatter regarding Cuba was quiet. However, the new chief executive was determined to change that.<sup>146</sup>

During his first year in office, Carter took steps to normalize relations with Cuba, including lifting the restrictions on travel (as well as an allowance of the purchase of up to \$100 of Cuban goods during any single visit), and the signing of a bilateral fishing rights and maritime boundaries agreement.<sup>147</sup> More major changes followed, including opening "interest sections" in Washington D.C. and Havana that functioned in similar capacity of that of ambassadors and embassies,<sup>148</sup> and discontinuing the blacklisting of foreign ships engaged in trade with Cuba.<sup>149</sup>

Nevertheless, President Carter's steps toward normalization of relations were undermined when a series of events stripped him of the political capacity necessary to make substantial changes. First, Cuba's aggressive military engagements, most notably alongside the Soviet Union in the Ogaden War in Ethiopia in 1978, stalled any momentum that had weighed in favor of closer ties.<sup>150</sup> The final straw, however, came in 1979

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<sup>142</sup> *Id.* at 3.

<sup>143</sup> DALE ANDERSON, CUBAN AMERICANS 14–15 (2006).

<sup>144</sup> BATTLEGROUND: IMMIGRATION 715 (Judith Ann Warner, ed., vol. 2, 2008).

<sup>145</sup> ANDERSON, *supra* note 143, at 13–16.

<sup>146</sup> HANEY & VANDERBUSH, *supra* note 97, at 27.

<sup>147</sup> *Id.*

<sup>148</sup> KATE DUPES HAWK, RON VILLELLA, ADOLFO LEYVA DE VARONA & KRISTEN CIFERS, FLORIDA AND THE MARIEL BOATLIFT OF 1980: THE FIRST TWENTY DAYS 34–35 (2014).

<sup>149</sup> HANEY & VANDERBUSH, *supra* note 97, at 27.

<sup>150</sup> *Id.* at 28.

with the American media's discovery of a soviet military brigade housed in Cuba.<sup>151</sup> Although the existence of the brigade had been known by the United States for years, the corresponding media coverage scuttled any hope for progress on the issue.<sup>152</sup>

### *J. The Mariel Boatlift*

While American policy progress was stalled, the discontent within Castro's Cuba continued to grow. As a result of a stagnating economy, political and social crackdowns and housing and job shortages, in the late 1970's untold thousands continued their attempts to flee the island.<sup>153</sup> This came to a head in 1980 when five Cubans drove a stolen bus through a fence into the Peruvian embassy in Havana.<sup>154</sup> The passengers onboard the bus were granted asylum, but one guard was killed when the other guards opened fire.<sup>155</sup>

Word quickly spread through Cuba about the incident and Peru's grant of asylum, and thousands turned out to flock to other embassies requesting similar aid.<sup>156</sup> Facing pressure as a result of the resulting international public relations debacle, Castro announced that those wanting to flee Cuba could gather at the Port of Mariel to board boats bound for the United States.<sup>157</sup> This was arguably made possible by the Jimmy Carter administration, who had established the United States Interests Section in Havana to further U.S. political and diplomatic objectives.<sup>158</sup> This offer did not fall on deaf ears, and over 120,000 people took to the waters of the Straits of Florida in search of the basic civil liberties afforded in America.<sup>159</sup> The United States, with a long history of accepting of Cuban immigrants, responded by assigning Coast Guard ships to assist the fleeing vessels.<sup>160</sup>

Refugee compounds were set up in Key West and Miami, Florida to process and document each new arrival.<sup>161</sup> Once processed, the refugees

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<sup>151</sup> *Id.*

<sup>152</sup> David Binder, *Soviet Brigade: How the U.S. Traced It*, N.Y. TIMES, Sept. 13, 1979, at A16.

<sup>153</sup> JOSEPH R. CONLIN, THE AMERICAN PAST: A SURVEY OF AMERICAN HISTORY, VOLUME II: SINCE 1865, at 836 (2009).

<sup>154</sup> SAMUEL FARBER, CUBA SINCE THE REVOLUTION OF 1959: A CRITICAL ASSESSMENT 26 (2011).

<sup>155</sup> *Id.*

<sup>156</sup> D.H. FIGUEREDO & FRANK ARGOTE-FREYRE, A BRIEF HISTORY OF THE CARIBBEAN 220 (2008).

<sup>157</sup> *Id.*

<sup>158</sup> See STATEN, THE HISTORY OF CUBA *supra* note 43, at 127.

<sup>159</sup> MICHAEL A. MORRIS, CARIBBEAN MARITIME SECURITY 126 (2016).

<sup>160</sup> *Id.*

<sup>161</sup> FIGUEREDO & ARGOTE-FREYRE, *supra* note 156, at 220–21.

were then moved to other compounds around the country, including those in Pennsylvania, Wisconsin and Arkansas.<sup>162</sup> But the successful arrival of the Cuban migrants did not quell all of the discontent that had been simmering in their hearts, and the refugees in the immigration processing center in Fort Chaffee, Arkansas staged a very public riot as a result of the conditions they experienced.<sup>163</sup> Observing the process, Castro could barely conceal his vitriol, calling those who left “scum” and eventually ending the program in 1973.<sup>164</sup>

Further complicating the issue, after the boatlift was initiated, it emerged that a portion of the refugees had criminal histories in Cuba or suffered from disabilities.<sup>165</sup> Castro thus viewed them as undesirables and cruelly stated that he had “flush[ed] the toilets” of Cuba by allowing them to leave.<sup>166</sup>

Some refugees, who the United States determined had committed crimes, were detained as excludable aliens. This created its own “catch 22,” as the Cuban government would not take them back and the United States would not let them in.<sup>167</sup> Nevertheless, the boatlift and the Marielitos (as those who fled came to be called) were eventually viewed as an expression of America’s enduring commitment to freedom. Its positive effects can be found today in communities across the country, including Miami, Florida, where those who came on the boat lift can be found in positions of community leadership including doctors and entrepreneurs.<sup>168</sup>

In the years that followed the Mariel Boatlift, the Soviet Union began to experience severe economic difficulties, resulting in a decrease in

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<sup>162</sup> JEFFREY F. TAFFET & DUSTIN WALCHER, *THE UNITED STATES AND LATIN AMERICA: A HISTORY WITH DOCUMENTS* 437 (2017).

<sup>163</sup> *1980 – Crisis at Ft. Chaffee*, ARK. TIMES, Sept. 23, 2004.

<sup>164</sup> LEE ENGFER, *CUBANS IN AMERICA* 43 (2005).

<sup>165</sup> JANA LIPMAN, *GUANTÁNAMO: A WORKING-CLASS HISTORY BETWEEN EMPIRE AND REVOLUTION* 205 (2008).

<sup>166</sup> William E. Gibson, *2,000 Cubans Still in Prison Most of the Mariel Detainees Released Have Settled in S. Florida*, SUN SENTINEL, July 7, 1988, [http://articles.sun-sentinel.com/1988-07-07/news/8802100145\\_1\\_prison-riots-mariel-cuban-dangerous-criminals](http://articles.sun-sentinel.com/1988-07-07/news/8802100145_1_prison-riots-mariel-cuban-dangerous-criminals).

<sup>167</sup> James LeMoyne, *Most Who Left Cuba Sailed to a New Life, a Few to Limbo*, N.Y. TIMES, Apr. 15, 1990, <http://www.nytimes.com/1990/04/15/us/most-who-left-mariel-sailed-to-new-life-a-few-to-limbo.html?pagewanted=all>; see also Laura Parker, *Many Marielitos Languish in Prison as Special Justice Dept. Reviews End*, WASH. POST, June 25, 1991, [https://www.washingtonpost.com/archive/politics/1991/06/25/many-marielitos-languish-in-prison-as-special-justice-dept-reviews-end/6e33dbbb-139a-413d-aedb-526508de1172/?utm\\_term=.573b87bb8b12](https://www.washingtonpost.com/archive/politics/1991/06/25/many-marielitos-languish-in-prison-as-special-justice-dept-reviews-end/6e33dbbb-139a-413d-aedb-526508de1172/?utm_term=.573b87bb8b12).

<sup>168</sup> Alfonso Chardy, *How Fidel Castro and the Mariel Boatlift changed lives and changed Miami*, THE MIAMI HERALD, Nov. 26, 2016, <http://www.miamiherald.com/news/nation-world/world/americas/fidel-castro-en/article117206643.html>.

support for its Cuban ally.<sup>169</sup> This economic stress was amplified by the administration of President Ronald Reagan, which tightened the embargo and re-established the ban on travel to and from Cuba.<sup>170</sup> As a result, Castro introduced austerity measures curtailing electricity usage and rationing food.<sup>171</sup> Soon after, in order to meet the increasing demands of an economy in peril, Cuba placed an increasing emphasis on the promotion of tourism on the island.<sup>172</sup> Down the line, this decision would lead to the 2004 introduction of a two-tiered economic system, consisting of the domestically held Cuban peso and the more valuable and largely tourist-used Cuban convertible peso.<sup>173</sup>

Nevertheless, seeing an opportunity to finally oust Castro from power, the United States continued to tighten regulations as they applied to Cuba. In 1992, the Cuban Democracy Act was passed, which prohibited foreign-based subsidiaries of American companies from engaging in trade with Cuban entities, or sending remittances to individuals in Cuba, while also allowing donation of food and the trade of medical supplies as long as the intention was to help the Cuban people.<sup>174</sup>

#### *K. The Clinton Years and Helms–Burton*

During the early years of the Clinton administration, the United States amended the embargo several times, including decreasing restrictions on travel and remittances.<sup>175</sup> Nevertheless, any progress that might have been made was dashed in February of 1996, when the Cuban Air Force shot down two unarmed Cessna planes operated by the group “Brothers to the Rescue.”<sup>176</sup> Prior to the incident, the group was well known for its flights over the Straits of Florida where it spotted and assisted Cuban refugee-rafters bound for the United States and also for dropping anti-Castro leaflets over Cuba.<sup>177</sup> The attack resulted in the deaths of three Cuban-

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<sup>169</sup> ARIANA HERNANDEZ-REGUANT, CUBA IN THE SPECIAL PERIOD: CULTURE AND IDEOLOGY IN THE 1990S 4 (2009).

<sup>170</sup> AVIVA CHOMSKY, A HISTORY OF THE CUBAN REVOLUTION 74 (2015).

<sup>171</sup> HERNANDEZ-REGUANT, *supra* note 169, at 4.

<sup>172</sup> A CONTEMPORARY CUBA READER: THE REVOLUTION UNDER RAUL CASTRO 174 (Philip Brenner, Marguerite Rose Jiménez, John M. Kirk, William M. LeoGrande, eds. 2014).

<sup>173</sup> *Cuba's Currency: Double Trouble*, THE ECONOMIST, Oct. 23, 2013, <http://www.economist.com/blogs/americasview/2013/10/cubas-currency>.

<sup>174</sup> 22 U.S.C. § 6001 (1992).

<sup>175</sup> URLICH, *supra* note 130, at 14–15.

<sup>176</sup> Elaine De Valle, Manny Garcia & Martin Merzer, *From the Herald Archives: Downed at Cuba's Door: MiGs Blast 2 Exile Planes*, THE MIAMI HERALD, Feb. 26, 1996, <http://www.miamiherald.com/news/nation-world/world/americas/cuba/article4556647.html>.

<sup>177</sup> *Id.*

American U.S. citizens and one U.S. resident.<sup>178</sup> In the wake of the shoot down, tensions ran high as congress urged the Clinton administration to adopt an ever–more stringent Cuban sanctions profile.

Notably, the attacks proved to be the catalyst for passage of the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act (otherwise known as “Helms–Burton” for the bill’s sponsors, Jesse Helms and Dan Burton), which had a number of effects on the relationship between the United States and Cuba.<sup>179</sup> First, the law strengthened the embargo by extending its application to foreign countries that conducted trade with Cuba.<sup>180</sup> Second, the law provided that the President of the United States should oppose and vote against Cuba’s inclusion in the Organization of American States.<sup>181</sup> Third, Helms–Burton prohibited trafficking in property confiscated by the Cuban government and denies United States entry visas to officers or stockholders of any suspected trafficking companies.<sup>182</sup> Fourth, the bill included a provision codifying the Cuban embargo which gave Congress the sole power to repeal or alter the law rather than the executive branch.<sup>183</sup>

Specifically, the bill stipulated that the embargo would remain in effect until Cuba (1) is governed pursuant to free and fair elections, (2) shows respect for the basic civil liberties and human rights of the citizens of Cuba, (3) moves toward a market–oriented economy based on the right to own and enjoy property, (4) makes constitutional changes to ensure the continuation of free and fair elections and civil rights, (5) makes demonstrable progress to establish an independent judiciary, and (6) makes demonstrable progress in returning property nationalized in Cuba on or after January 1, 1959.<sup>184</sup>

Helms–Burton, however, was not without its critics, the majority of which feared the codification of the embargo would limit the foreign policy flexibility of future presidents in dealing with Cuba.<sup>185</sup> Similarly, the Clinton administration was also given pause by the extraterritorial

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<sup>178</sup> *Shoot Down of Brothers to the Rescue Aircraft Remembered on 20th Anniversary*, NBC MIAMI, Feb. 24, 2016, <http://www.nbcmiami.com/news/local/Shoot-Down-of-Brothers-to-the-Rescue-20th-Anniversary-369957221.html>.

<sup>179</sup> DANIEL P. ERIKSON, *THE CUBA WARS: FIDEL CASTRO, THE UNITED STATES, AND THE NEXT REVOLUTION* 30 (2010).

<sup>180</sup> 22 U.S.C. § 6032(a) (1996).

<sup>181</sup> *Id.* § 6035.

<sup>182</sup> *Id.* § 6091(a)(1)–(4).

<sup>183</sup> See HANEY & VANDERBUSH, *supra* note 97, at 105 (Codification is found in Title I § 102(h) of the bill which states that “[t]he economic embargo of Cuba, as in effect on March 1, 1996 . . . shall be in effect upon enactment of this Act.”).

<sup>184</sup> 22 U.S.C. § 6064(c) (2012); *see also id.* § 6063(c)(3); *id.* § 6066(1)–(6).

<sup>185</sup> HANEY & VANDERBUSH, *supra* note 97, at 107.

reach of the law.<sup>186</sup> Nevertheless, Clinton was determined to show toughness on the Cuba issue. With the announcement of his support for Helms–Burton, Clinton included additional measures that further tightened the embargo, increased restrictions on travel to and within the United States by Cuban officials, and suspended all chartered air travel from the United States to Cuba.<sup>187</sup>

On March 12, 1996, President Clinton signed the Helms–Burton Act.<sup>188</sup> He stated that the passage of the Act should

send a powerful, unified message from the United States to Havana, that the yearning of the Cuban people for freedom must not be denied . . . [and the United States] will not tolerate attacks on United States citizens and we will stand with those both inside and outside Cuba who are working for a peaceful transition to freedom and democracy.<sup>189</sup>

Additionally, the co–sponsor of the bill, Dan Burton, emphatically stated that the agreement “makes clear that Fidel Castro and his blood–soaked, dictatorial, corrupt tyranny is about to end.”<sup>190</sup>

#### *L. The Obama Normalization and Beyond*

As history tends to demonstrate, progress comes in spurts. While President Clinton’s successor, George W. Bush, chose not to make Cuba a meaningful priority, the same could not be said for President Barack Obama. Initial progress, however, was slow, and it was not until December of 2014 that President Barack Obama directed the United States Government to take the first steps toward the normalization of relations between the United States and Cuba.<sup>191</sup> The announcement was the culmination of 18 months of secret negotiations between the U.S. and Cuba with the help of Pope Francis.<sup>192</sup> President Obama, in a nationally

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<sup>186</sup> ERIKSON, *supra* note 179, at 30.

<sup>187</sup> THOMAS M. LEONARD, *ENCYCLOPEDIA OF CUBAN–UNITED STATES RELATIONS* 53 (2010).

<sup>188</sup> MORALES DOMINGUEZ, *PREVOST*, *supra* note 136, at 73.

<sup>189</sup> Remarks on Signing the Cuban Liberty and Democratic Solidary (LIBERTAD) Act of 1996, 1 Pub. Papers 432–433 (Mar. 12, 1996).

<sup>190</sup> HANEY & VANDERBUSH, *supra* note 97, at 107.

<sup>191</sup> Peter Baker, *U.S. to Restore Full Relations with Cuba, Erasing a Last Trace of Cold War Hostility*, N.Y. TIMES, Dec. 17, 2014, <http://www.nytimes.com/2014/12/18/world/americas/us-cuba-relations.html>.

<sup>192</sup> Glenn Garvin, *Deal Between U.S., Cuba Culminated 18 Months of Secret Talks*, THE MIAMI HERALD, Dec. 17, 2014, <http://www.miamiherald.com/news/nation-world/national/article4596901.html>.

televised statement, stated that the United States “. . . [would] end an outdated approach that for decades has failed to advance our interests, and instead [would] begin to normalize relations between our two countries.”<sup>193</sup> This agreement, President Obama stated, was calculated to “begin a new chapter among the nations of the Americas and move beyond a rigid policy that [was] rooted in events that took place before most of us were born.”<sup>194</sup>

The agreement to normalize relations involved the exchange of prisoners held in the United States and in Cuba, including Cuba’s release of U.S. citizen Alan P. Gross and non-American, Cuban-native U.S. intelligence “asset” Rolando Sarraff Trujillo in exchange for three Cuban spies who were captured in 1998 and held by the United States.<sup>195</sup> On January 16, 2015, President Obama issued regulations that amended the CACR and the Export Administration Regulations (EAR) and liberalized transactions with Cuba.<sup>196</sup> These regulations were amended various times in the months that followed, and on July, 20 2015, the Cuban Embassy opened in Washington D.C. for the first time since 1961.<sup>197</sup>

On the whole, the amendments eased travel restrictions for family visits, public performances, and professional, educational, and religious activities.<sup>198</sup> Moreover, financial transactions on the island were affected. While most transactions between the U.S. and Cuba were still prohibited and OFAC continued to enforce the prohibitions of the CACR, the new regulations permitted credit and debit card usage in Cuba and allowed travelers to import up to \$400 worth of goods from Cuba, including up to \$100 in tobacco and alcohol products.<sup>199</sup>

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<sup>193</sup> President Barack Obama, *Statement on Cuba Policy Changes*, THE WHITE HOUSE (Dec. 17, 2014), <https://www.whitehouse.gov/the-press-office/2014/12/17/statement-president-cuba-policy-changes>.

<sup>194</sup> *Id.*

<sup>195</sup> Jeff Stein, *The American Spy Traded in the U.S.—Cuba Diplomatic Breakthrough*, NEWSWEEK, Dec. 17, 2014, <http://www.NEWSWEEK.com/american-spy-traded-us-cuba-diplomatic-breakthrough-293070>.

<sup>196</sup> See Amendments to the Cuban Assets Control Regulations, 80 Fed. Reg. 11 (Jan. 16, 2015) (to be codified at 31 C.F.R. 515).

<sup>197</sup> Oren Dorell, *Cuban Flag Flies at Embassy in Washington*, USA TODAY, July 20, 2015, <http://www.usatoday.com/story/news/world/2015/07/20/cuban-embassy-opens-washington/30409717/>; see also *Resource Center: Cuba Sanctions*, U.S. DEPARTMENT OF TREASURY, June 16, 2017, <https://www.treasury.gov/resource-center/sanctions/Programs/Pages/cuba.aspx>; Joan Koenig & Mollie D. Sitkowski, *OFAC and BIS Release Amendments to Cuban Embargo Regulations*, THE NATIONAL LAW REVIEW (Jan. 16, 2015), <http://www.natlawreview.com/article/ofac-and-bis-release-amendments-to-cuban-embargo-regulations>.

<sup>198</sup> 31 C.F.R. § 515.560.

<sup>199</sup> *Id.*

For their part, Cuban officials had said that they would find it difficult to move forward with diplomatic relations with the United States while they were still listed as a state sponsor of terrorism by the United States.<sup>200</sup> In an act of good faith, President Obama in December 2014 instructed the Secretary of State, John Kerry, to take steps toward reviewing Cuba's status as a state sponsor of terrorism.<sup>201</sup> Thereafter, the United States department of state conducted a "rigorous" review of Cuba's record, wherein they found that Cuba had not engaged in recent terrorist activity and received assurances from the Cuban government that it would not support terrorism in the future.<sup>202</sup> As a result, on April 14, 2015, the White House announced that President Obama intended to remove Cuba from the American government's list of nations that sponsor terrorism.<sup>203</sup>

Continuing this trend, in March of 2016, President Obama made history as the first sitting American President to conduct a state visit to Havana in a generation.<sup>204</sup> Speaking in the Gran Teatro de la Habana, President Obama stated that he had "come . . . to bury the last remnant of the Cold War in the Americas [and to] extend a hand of friendship to the Cuban People."<sup>205</sup> While President Obama went to Havana to extend an olive branch, he took great care to emphasize the United States' stance on Human Rights stating that

every person should be equal under the law. Every child deserves the dignity that comes with education, and healthcare, and food on the table and a roof over the heads . . . citizens should be free to speak their minds without fear to organize, and to criticize their government, and to protest peacefully, and that the rule of law should

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<sup>200</sup> Randal C. Archibold & Julie Hirschfeld Davis, *Cuba to Be Removed From U.S. List of Nations That Sponsor Terrorism*, N.Y. TIMES, Apr. 14, 2015, <http://www.nytimes.com/2015/04/15/world/americas/obama-cuba-remove-from-state-terror-list.html>.

<sup>201</sup> Zeke J. Miller, *U.S. and Cuba Move to Thaw Relations After Prisoner Exchange*, TIME, Dec. 17, 2014, <http://time.com/3637483/alan-gross-cuba-barack-obama/>; see also Thomas Sparrow, *How Will Cuba Get off the State-Sponsored Terrorism List?*, BBC NEWS, Jan. 23, 2015, <http://www.bbc.com/news/world-us-canada-30957118> (The island nation had first landed on the list in 1982 due to its support of leftist insurgents in Latin America and then remained there in the years that followed.).

<sup>202</sup> Archibold & Davis, *supra* note 200.

<sup>203</sup> *Id.*

<sup>204</sup> Lily Rothman & Liz Ronk, *What Cuba Looked Like the Last Time a President Visited*, TIME, March 21, 2015, <http://time.com/4264563/1920s-cuba-presidential-visit/>.

<sup>205</sup> President Barack Obama, *Remarks to the People of Cuba*, THE WHITE HOUSE (Mar. 22, 2016), <https://www.whitehouse.gov/the-press-office/2016/03/22/remarks-president-obama-people-cuba>.

not include arbitrary detentions of people who exercise those rights.<sup>206</sup>

Recently, however, the viability of the current trend toward normalization of relations has been called into question by the election of Donald Trump as President of the United States. Prior to his election, and in his capacity as a businessman, Trump favored economic ties with Cuba, even going so far as to send teams to Havana to explore the possibilities of investment in a hotel and casino.<sup>207</sup> His political record is somewhat more complicated as he has openly advocated for the complete continuation of the Cuban embargo and a prohibition on business with the Castro regime.<sup>208</sup>

During a speech on June 16, 2017 in Miami, Florida, President Trump announced that his administration would reverse the Obama normalization, which he called “terrible and misguided.”<sup>209</sup> In a Presidential Memorandum also signed on that date in Miami, President Trump stated that his administration would prohibit economic practices that would “disproportionately benefit the Cuban government, or its military, intelligence, or security agencies or personnel at the expense of the Cuban people” and that the United States would ensure adherence to the statutory ban on tourism in Cuba.<sup>210</sup>

While regulations amending the CACR and the Export Administration Regulations (EAR) are still forthcoming, it appears that, rhetoric aside, the Trump administration does not intend to completely abandon the normalization efforts of the prior administration. Importantly, guidance from the Trump administration has allowed for a number of business endeavors to remain.

First, commercial relationships between American enterprises and prohibited Cuban entities that were forged prior to the announcement of the regulations will not be affected by any new prohibitions.<sup>211</sup> Second,

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<sup>206</sup> *Id.*

<sup>207</sup> Kurt Eichenwald, *How Donald Trump's Company Violated the United States Embargo against Cuba*, NEWSWEEK, Sep. 29, 2016, <http://www.newsweek.com/2016/10/14/donald-trump-cuban-embargo-castro-violated-florida-504059.html>.

<sup>208</sup> Frances Robles, *Business or Politics? What Trump Means for Cuba*, THE NEW YORK TIMES, Nov. 15, 2016, [http://www.nytimes.com/2016/11/16/world/americas/cuba-donald-trump.html?\\_r=0](http://www.nytimes.com/2016/11/16/world/americas/cuba-donald-trump.html?_r=0).

<sup>209</sup> Julie Hirschfeld Davis, *Trump Reverses Pieces of Obama Era Engagement with Cuba*, N.Y. TIMES, June 16, 2017, <https://www.nytimes.com/2017/06/16/us/politics/cuba-trump-engagement-restrictions.html>.

<sup>210</sup> Memorandum from President Donald J. Trump to Vice President Mike Pence (June 16, 2017), <https://www.whitehouse.gov/the-press-office/2017/06/16/national-security-presidential-memorandum-strengthening-policy-united>.

<sup>211</sup> *Frequently Asked Questions on President Trump's Cuba Announcement*, DEPARTMENT OF TREASURY OFFICE OF FOREIGN ASSETS CONTROL (July 25, 2017),

President Trump's memorandum carves out exceptions for transactions that concern American governmental operations in Cuba, that support programs to build democracy in Cuba, that concern air and sea operations supporting permissible travel, cargo, or trade, that support the acquisition of visas for permissible travel, that support the expansion of telecommunications and internet access for the Cuban people, that support the sale of agricultural commodities and medicines, that relate to remittances, or that otherwise further the national security or foreign policy interests of the United States.<sup>212</sup> Finally, and crucially, the Trump policy statements will not prohibit transactions with private Cuban businesses, commonly known as *cuentropropistas*, which have thrived under the recent thawing of relations with the United States.<sup>213</sup>

The fact that the policies do not amount to a complete halt in relations may be attributable to something bigger than an internal policy choice. Indeed, polling in 2016 found that as much as 75 percent of the American population supports the re-establishment of relations with Cuba.<sup>214</sup> Thus, despite a setback, it seems that the normalization of relations will continue.

The prospects of continued engagement seem to also be increased by Fidel Castro's death on November 26, 2016.<sup>215</sup> While his brother Raúl had assumed the Cuban Presidency in 2008,<sup>216</sup> he has stated publicly that he plans to step down from his post as Cuba's acting President in 2018.<sup>217</sup> Although the younger Castro brother stated in December 2016 that Cuba was "not going, and will not go, toward capitalism," he stressed the importance of foreign investments in the development of the country.<sup>218</sup> If he does step down in 2018, it is widely believed that his successor will be current Vice-President Miguel Díaz-Canal, who some speculate could

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[https://www.treasury.gov/resource-center/sanctions/Programs/Documents/cuba\\_faqs\\_20170725.pdf](https://www.treasury.gov/resource-center/sanctions/Programs/Documents/cuba_faqs_20170725.pdf).

<sup>212</sup> See Memorandum, *supra* note 210.

<sup>213</sup> Melanie Zanona, *In Cuba, Trump's Policy Shift Casts a Dark Shadow*, THE HILL, July 19, 2017, <http://thehill.com/policy/transportation/342638-in-cuba-trumps-policy-shift-casts-dark-shadow>.

<sup>214</sup> Carmen Sesin, *Two Years After U.S.–Cuba Opening, What's Next Under Trump?*, NBC NEWS, Dec. 17, 2016, <http://www.nbcnews.com/news/latino/two-years-after-u-s-cuba-opening-what-s-next-n696471>.

<sup>215</sup> See DePalma, *supra* note 88.

<sup>216</sup> James C. McKinley Jr., *Raul Castro Becomes Cuban President*, N.Y. TIMES, Dec. 4, 2008, <http://www.nytimes.com/2008/02/24/world/americas/24iht-cuba.5.10342397.html>.

<sup>217</sup> Damien Cave, *Raúl Castro Says His New 5-Year Term as Cuba's President Will Be His Last*, N.Y. TIMES, Feb. 24, 2013, <http://www.nytimes.com/2013/02/25/world/americas/raul-castro-to-step-down-as-cubas-president-in-2018.html>.

<sup>218</sup> Christopher Woody, *Cuba's Opening to the World Has a Problem Much Closer to Home than Donald Trump*, SFGATE (Jan. 7, 2016), <http://www.sfgate.com/technology/businessinsider/article/Cuba-s-opening-to-the-world-has-a-problem-much-10842180.php>.

possibly move Cuba toward a market economy, and whom others would view as a mere figurehead for the Cuban military.<sup>219</sup> Parsing the tea leaves, President Trump may have an opportunity to make a significant impact on bilateral relations in the coming years.

## II. CURRENT ROLE AND SCOPE OF TRADING REGULATION

### A. Cuban Trading Restrictions

Originally closed off to the world of trading possibilities, the Cuban government recently announced its intentions to make strides toward opening itself to the global economy in the near future with the implementation of Law No. 118, which is otherwise known as Cuba's "Foreign Investment Act."<sup>220</sup> This law presents non-Cuban entities looking to do business on the island with three options: 1) entering into a joint venture with the Cuban government; 2) entering into an International Economic Association agreement;<sup>221</sup> or 3) operating as an entirely foreign capital based corporation.<sup>222</sup> Under the act, all foreign investments must be approved by the Cuban Council of Ministers.<sup>223</sup> Each of these entities, after approval from said authorities and registration,<sup>224</sup> are granted access to the Cuban National Banking System, along with other privileges, including the right to trade in residential and commercial real estate. While the Cuban government has expressed specific preference that necessary goods be acquired and used in Cuba, such entities are granted the ability to import and export goods as necessary.<sup>225</sup>

The first avenue for foreign investment in Cuba is the joint venture, which consists of at least one Cuban entity and one foreign entity, and it requires the establishment of a separate juridical entity separate and apart from any of the parties to the investment.<sup>226</sup> In so doing, the parties must

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<sup>219</sup> Glenn Garvin, Nora Gamez Torres & Mimi Whitfield, *After the Castro Brothers: How Much Power will Cuba's Crown Prince Really Wield?*, THE MIAMI HERALD, Feb. 21, 2016, <http://www.miamiherald.com/news/nation-world/world/americas/cuba/article61355797.html>.

<sup>220</sup> Foreign Investment Act, Cuban Law Number 118, March 29, 2014, Gaceta Oficial De La Republica De Cuba, available at <http://www.cubadiplomacia.cu/LinkClick.aspx?fileticket=IsdG-CVp5To%3D&tabid=21894>.

<sup>221</sup> *Id.* at art. 15.1.

<sup>222</sup> *Id.* at art. 13.1.

<sup>223</sup> *Id.* at art. 11.1(2).

<sup>224</sup> *Id.* at art. 52.

<sup>225</sup> *Id.* at art. 26.1.

<sup>226</sup> *Id.* at art. 14.1; see also *id.* at art. 2(h) (joint ventures are "Cuban commercial company[ies] which adopt[] the form of a corporation with registered shares in which one or more national investors and one or more foreign investors participate as shareholders).

incorporate by creating and filing a public deed, an Articles of Incorporation, and an association agreement.<sup>227</sup> Generally, in these ventures, the share capital contributions must be agreed upon by the partners, but once the business is established, shareholders may be changed by their own consent if there is prior approval by the authority which granted the authorization.<sup>228</sup>

Cuba also allows investors or companies seeking to do business on the island to enter into International Economic Association Agreements. These agreements, are similar to a joint venture in that they involve agreements between Cuban entities and international businesses; however, this classification does not require the creation of a separate Cuban juridical person, and thus, does not require incorporation.<sup>229</sup> Even so, these arrangements must be registered with the Cuban government by submitting a public deed.<sup>230</sup> Notably, parties pursuing this option must negotiate every aspect of their agreement with the Cuban party it is partnering with, including the agreement's economic feasibility, the form of management, and the legal documents needed for its formalization.<sup>231</sup>

Finally, and perhaps most enticing to international investors in Cuba, is the option for international businesses to act as totally foreign capital companies.<sup>232</sup> Pursuant to this option, foreign investors retain a business that exists wholly apart from the Cuban government. To avail themselves of this opportunity, the foreign investors are forced to register the business with the Cuban authorities and conduct the business within Cuba by either: 1) acting as natural persons; 2) setting up a Cuban subsidiary office as a juridical person and registering the company as a Cuban entity; or 3) acting as juridical persons by establishing the business as a branch of a foreign entity.<sup>233</sup> These companies can set up offices, branches and subsidiaries in Cuba.<sup>234</sup> However, this form of commerce is not undertaken in the sole discretion of the actor. Notably, such an endeavor must be negotiated with the Cuban Ministry of Foreign Trade and approved in writing, which indicates the Cuban entity responsible for providing the endeavor with the workers necessary for activity.<sup>235</sup>

The Cuban government requires that all approved business ventures adhere to applicable Cuban laws regarding the provision of labor, which

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<sup>227</sup> *Id.* at art. 14.1(4).

<sup>228</sup> *Id.* at art. 14.1(3), (7).

<sup>229</sup> *Id.* at art. 15.1(a).

<sup>230</sup> *Id.* at art. 15.1(5).

<sup>231</sup> *Id.* at art. 19.1.

<sup>232</sup> *Id.* at art. 16.1.

<sup>233</sup> *Id.* at art. 16.1(2).

<sup>234</sup> *Id.* at art. 16.2(2)(c).

<sup>235</sup> *See id.* at art. 19.1(2).

provides a default for hiring either Cuban workers or foreign workers residing permanently in Cuba, and who have been provided by an employing agency proposed by the Ministry of Foreign Trade and authorized by the Ministry of Labor and Social Security.<sup>236</sup> If the worker provided by the Cuban government proves to be unsatisfactory in the business, the company can request that the employing agency replace the individual with another.<sup>237</sup> However, in most circumstances, it is accepted that the management and administrative bodies of such companies can determine those certain top administrative positions or “posts of a technical nature” that are capable of being filled by non-Cuban individuals.<sup>238</sup>

While Cuban tax rates are high on an international standard, Cuba has also created certain tax loopholes meant to stimulate investment, as foreign investors who are partners in joint ventures and parties to International Economic Association Agreements are exempt from paying personal income taxes for the revenues received from the business’s dividends or profits for a period of eight (8) years.<sup>239</sup> After that period, such taxes are paid by the business itself at a fifteen percent (15%) rate.<sup>240</sup> These ventures also receive heavy breaks by avoiding taxes on the import of equipment and machinery during the investment process,<sup>241</sup> paying only half of the Cuban sales tax on wholesale goods,<sup>242</sup> paying only half of the applicable tax rate on services, and avoiding any and all taxes for use of the labor force.<sup>243</sup>

### *B. American Trading Restrictions*

On the American side, considering the regulatory reinterpretations by the Trump administration, there are a limited number of accepted trading options between the United States and Cuba that are unlikely to be affected. These avenues include: (1) medicines and medical devices;<sup>244</sup> (2) items necessary for the environmental protection of the American and international air quality, waters and coastlines, including items related to renewable energy or energy efficiency;<sup>245</sup> (3) items meant to support the Cuban people, including items that are intended to improve the living

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<sup>236</sup> *See id.* at art. 30.1; *see also id.* at art. 31.1.

<sup>237</sup> *Id.* at art. 31.1(2).

<sup>238</sup> *Id.*

<sup>239</sup> *Id.* at art. 36.1(2).

<sup>240</sup> *Id.* at art. 36.1.

<sup>241</sup> *Id.* at art. 41.

<sup>242</sup> *Id.* at art. 37.1.

<sup>243</sup> *Id.* at art. 38.1.

<sup>244</sup> 15 C.F.R. § 746.2(b)(1) (2017).

<sup>245</sup> *Id.* § 746.2(b)(2)(vi).

conditions of the Cuban people, support independent economic activity, and strengthen civil society in Cuba, and improve the free flow of information to, from, and among the Cuban people;<sup>246</sup> (4) agricultural commodities, including food, feed, fish, shellfish, beer, wine and spirits, livestock, fiber including cotton, wool and other fibers, tobacco and tobacco products, wood, seeds, and limited types of fertilizers;<sup>247</sup> (5) consumer communications devices, so long as no such products are shipped to communist party organizations or officials;<sup>248</sup> and (6) telecommunications infrastructure, transactions related to the establishment of facilities to provide telecommunications services linking the United States and Cuba, and specifically including fiber-optic cable placement and satellite facilities.<sup>249</sup>

Moreover, among some of these limited exceptions, domestic American businesses must clear a number of administrative hurdles before engaging in trade with Cuba. Specifically, exports to Cuba first require a license from the Office of Foreign Assets Control (“OFAC”), which is a sub agency of the US Department of the Treasury that “administers and enforces trade sanctions based on US foreign policy and national security goals against targeted foreign countries and regimes . . . .”<sup>250</sup> OFAC acts under the national emergency powers held by the executive, as well as authority granted by case-specific legislation.<sup>251</sup> Using this authority, OFAC grants licenses to export products to countries that the United States has imposed trade sanctions against.

OFAC’s licenses operate as an authorization to engage in an activity that would otherwise be prohibited.<sup>252</sup> OFAC grants two different types of licenses: general and specific. A general license authorizes the holder to undertake a certain transaction or activity amongst a class of persons without the need to apply for a license.<sup>253</sup> Conversely, “[a] specific license is a written document issued by OFAC to a particular person or entity, authorizing a particular transaction in response to a written license

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<sup>246</sup> *Id.* § 746.2(b)(2)(i)–(iii); *see also id.* § 740.21.

<sup>247</sup> *Id.* § 740.18; *see also id.* § 746.2(b)(2)(iv); *id.* § 772.1.

<sup>248</sup> *Id.* § 740.19; *see also id.* § 746.2(b)(2)(i).

<sup>249</sup> 31 C.F.R. § 515.542(d) (2016).

<sup>250</sup> *About*, U.S. DEPARTMENT OF THE TREASURY (June 29, 2017, 1:13 PM), <http://www.treasury.gov/about/organizational-structure/offices/Pages/Office-of-Foreign-Assets-Control.aspx>.

<sup>251</sup> *See id.*

<sup>252</sup> *OFAC License Application Page*, U.S. DEPARTMENT OF THE TREASURY (May 2, 2017, 10:32AM), <http://www.treasury.gov/resource-center/sanctions/Pages/licensing.aspx>.

<sup>253</sup> *Resource Center: OFAC FAQs: General Questions*, U.S. DEPARTMENT OF TREASURY (Mar. 14, 2017, 3:29 PM), [https://www.treasury.gov/resource-center/faqs/Sanctions/Pages/faq\\_general.aspx](https://www.treasury.gov/resource-center/faqs/Sanctions/Pages/faq_general.aspx).

application.”<sup>254</sup> Both travel and the export of some products to Cuba, including agricultural and food products, require only a general license. Nevertheless, OFAC may evaluate trade proposals that do not fall within the penumbra of the specified exceptions on a case-by-case basis, and in a number of limited situations, OFAC can issue specific licenses authorizing trade.<sup>255</sup>

Once a general or specific license is issued by OFAC, an entity must then also gain approval from the Bureau of Industry and Security (“BIS”), which is a sub agency of the Department of Commerce. The BIS “[a]dvance[s] U.S. national security, foreign policy and economic objectives by ensuring an effective export control and treaty compliance system . . . .”<sup>256</sup> To gain a license from the BIS, one must submit an online application through its Simplified Network Application Process–Redesign (“SNAP–R”) system, which requires the exporting party to supply BIS with all the intimate details of the export, including but not limited to the nature of the product(s) being exported, how many there are, who is buying them and how and when shipments will take place.<sup>257</sup>

Once this information is submitted, it is then compiled and reviewed on a case by case basis by the BIS, the Department of Defense, and other government agencies who then choose either to accept the application or to deny it.<sup>258</sup> If BIS intends to deny the license application, it will notify the applicant of the decisions inherent in such denial, and it will give the applicant twenty (20) days to respond. If the applicant chooses to respond to such a denial but fails to persuade the BIS to change its minds, the applicant has a right to appeal the decision within forty–five (45) days of the date of final denial.<sup>259</sup>

Once approval has been secured from both OFAC and the BIS, the practical concern of the physical exportation of the goods must be entertained. Given the geographic proximity to the international trading hubs located in the southeast United States such as New Orleans, Tampa and Miami, and the range of seaports in Cuba, oceanic freight seems to be the most sensible option to import goods. This too requires a license and blessing from the United States government. To ship goods from the United States to Cuba an exporter must have a written permit to leave

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<sup>254</sup> *Id.*

<sup>255</sup> *See id.*; *see also* 31 C.F.R. § 501.801 (2016).

<sup>256</sup> *About BIS*, BUREAU OF INDUSTRY AND SECURITY U.S. DEPARTMENT OF COMMERCE, <https://www.bis.doc.gov/index.php/about-bis> (last visited Dec. 3, 2016).

<sup>257</sup> *See* Simplified Network Application Process – Redesign (SNAP–R), BUREAU OF INDUSTRY AND SECURITY, <https://www.bis.doc.gov/index.php/licensing/simplified-network-application-process-redesign-snap-r> (last accessed Oct. 9, 2017).

<sup>258</sup> *See e.g.* 15 C.F.R. §740.18 (2017).

<sup>259</sup> *Id.* § 750.6.

American waters and enter Cuban territorial seas that is issued upon request by the Commander of the Seventh Coast Guard District, located in Miami, Florida.<sup>260</sup> Once that written permit is garnered, it must be kept onboard the vessel as it travels to and from Cuba.<sup>261</sup>

Prior to the recent regulatory reinterpretation, all seafaring vessels that entered Cuban ports to engage in the trade of goods or the purchase or provision of services had to wait 180 days to reenter a US port for the purpose of loading or unloading freight.<sup>262</sup> However, this rule was softened by OFAC regulations promulgated in the wake of President Obama's December 2014 announcement regarding the interpretation of specific trade sanctions. These newer interpretations provide exceptions for the aforementioned vessel ban for the shipment of cargo exported under authorization from the Commerce Department and for vessels engaged in the exportation or re-exportation to Cuba from a third country of agricultural commodities, medicine or medical devices.<sup>263</sup>

The United States has also significantly changed its rules regarding payments before exports to Cuba can take place. Before 2015, OFAC required a cash payment for all goods exported before the actual physical shipment of such goods could take place.<sup>264</sup> However, now cash payments for the exported goods are only required before the transfer of title and control of the goods passes from an American entity to a Cuban entity.<sup>265</sup> This change was put into place to expand financing options for exports to Cuba and broaden the potential transaction base both now and in the future.<sup>266</sup>

### III. FUTURE SCOPE OF AMERICAN TRADE WITH CUBA

While options are currently limited, in 2014 alone trade between the United States and Cuba accounted for 299.1 million dollars.<sup>267</sup> Because this number represents exports that were arranged and accounted for prior to the 2015 regulatory re-interpretation, it stands to reason that these trade

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<sup>260</sup> 33 C.F.R. § 107.220(a) (2016).

<sup>261</sup> *Id.* at § 107-215(a) (2016).

<sup>262</sup> 31 C.F.R. § 515.207 (2016).

<sup>263</sup> *Id.* § 515.550.

<sup>264</sup> Cuban Assets Control Regulation, 80 Fed. Reg. 2291 (proposed Jan. 16, 2015) (to be codified at 31 C.F.R. 515).

<sup>265</sup> 31 C.F.R. § 515.533.

<sup>266</sup> Mimi Whitfield, *New U.S. Regulations Allow Financing of Some Exports to Cuba*, THE MIAMI HERALD, Jan. 26, 2016, <http://www.miamiherald.com/news/nation-world/world/americas/cuba/article56621558.html>.

<sup>267</sup> *Trade in Goods with Cuba*, U.S. CENSUS BUREAU (June 29, 2017), <https://www.census.gov/foreign-trade/balance/c2390.html>.

figures have the potential to improve dramatically in the long run. However, at least initially, the overall upside of engaging in business in the Cuban market will be limited by three practical considerations: 1) the ability of the average Cuban citizen to purchase discretionary imported products; 2) the established manner of doing business and 3) the ability of a foreign business entity to reach the Cuban market.

The first major limitations to rapid economic expansion is the limited income and wealth of the Cuban populace. In 2012, the average monthly salary of a Cuban citizen was only 466 Cuban Pesos, or roughly 22 dollars.<sup>268</sup> Taken in an annual calculation, this leaves the average Cuban citizen with only 5,592 Cuban Pesos, or approximately \$211 a year!<sup>269</sup> Thus, it's difficult to imagine how, if say, a fast food chain that desired to operate in Cuba would be able to generate a viable customer base in the short term. This is not to say such a strategy would not be viable in the long term. Rather, it is simply an observation that this low-income base will require time for the economic effects of international investment to penetrate the market, and thereby expand. This is especially affected by the fact that the harsh regulations imposed by the Cuban government has resulted in a secondary market where Cubans commonly avoid buying from established businesses and opt instead to exchange goods under the table.<sup>270</sup> As a result, time is also needed for the population to re-align their buying habits.

Second, the average member of the Cuban population has limited information access, as unrestricted home internet usage is illegal, public internet usage is limited, and only a handful of state-run media sources exist.<sup>271</sup> As a result, Cubans have become accustomed to a word-of-mouth process to find necessary goods and services instead of traditional American avenues of marketing.<sup>272</sup> Thus, for corporations wishing to compete, they face two major battles: 1) making the public aware of their product; and 2) convincing the Cuban public to buy it.

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<sup>268</sup> Isbel Diaz Torres, *The Mean Salary of Cubans*, HAVANATIMES.ORG (Aug. 6, 2013), <http://www.havanatimes.org/?p=97506>.

<sup>269</sup> XE Currency Converter: CUP to USD, <http://www.xe.com/currency/cup-cuban-peso> (last accessed Oct. 9, 2017).

<sup>270</sup> *Cuba's Black Market Thrives Despite Castro's New Market Reforms*, HUFFINGTON POST (Sept. 4, 2011 11:56 AM), [https://www.huffingtonpost.com/2011/07/05/cubas-black-market-thrives\\_n\\_890307.html](https://www.huffingtonpost.com/2011/07/05/cubas-black-market-thrives_n_890307.html).

<sup>271</sup> Michael Weissenstein, *Google, Cuba Sign Deal Allowing Faster Access to Company's Data*, ASSOCIATED PRESS, Dec. 12, 2016, <https://apnews.com/f707251b6d584d059256859917551ac8/source-google-deal-will-make-youtube-others-usable-cuba>.

<sup>272</sup> Michael Serazio, *Guerrilla Marketing: How Cubans Work Around a National Ban on Advertising*, THE ATLANTIC, March 21, 2016, <https://www.theatlantic.com/business/archive/2016/03/how-do-cubans-do-business-in-a-country-that-bans-ads/474507/>.

There are indications of hope on the horizon of information access, as American internet giant Google recently announced a deal to house servers in Cuba, which will facilitate faster internet access in places where usage is permitted.<sup>273</sup> On second thought, any incursion into the Cuban market by brands that are not already well-known will be an uphill battle against both state-backed products and international brand names. However, those companies willing to pursue such a long-term battle plan have a favorable chance to avail themselves of first mover advantages that are inherent when a frontier market opens, providing them with the potentiality of an extremely favorable business forecast.

Third, an American exporter would need to find a viable way to get those goods to market. Because of the strictures of both Cuban and American laws, achieving success on this front is not an easy task. That being said, American-Cuban trade has been made exponentially easier by the recent rollbacks in the American regulatory structure allowing American entities to receive cash before the transfer of title of the products to or from Cuba is complete.<sup>274</sup> This is an immense development because the prior requirement of cash before shipment was intended to be a practical roadblock that prevented many otherwise-viable trade opportunities in Cuba. This re-interpretation facilitates greater trade potential because it gives exporters greater opportunities to find buyers for their goods.

In 2014, Cuba acknowledged the emerging potential of trade opportunities in the near future when it issued the 168-page Portfolio of Opportunities for Foreign Investment.<sup>275</sup> While such a document is hardly the first manifestation of the needs of the Cuban economy, it offers a remarkably lucid glimpse into the Cuba's developmental visions. While Cuba is a centrally planned economy, the document indicates that there is room for private investors to make an impact on the Island. In 2014, Cuba imported 9.3 billion dollars of goods,<sup>276</sup> approximately \$299,100,000.00 of which, came from the United States, making America one of Cuba's most prevalent trading partners.<sup>277</sup> These figures represent a downward trend in the current import market, as in 2012, Cuba imported approximately \$464,500,000.00 worth of TSRA-authorized American

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<sup>273</sup> *Id.*

<sup>274</sup> *See* 31 C.F.R. § 515.533.

<sup>275</sup> *See generally* *Cuba: Portfolio of Investment Opportunities for Foreign Investment 2015*, [http://www.granma.cu/file/sp/CARTERA-de-inversion-14/datos/documentos/Cuba\\_Cartera-de-oportunidades\\_2014\\_ENG.pdf](http://www.granma.cu/file/sp/CARTERA-de-inversion-14/datos/documentos/Cuba_Cartera-de-oportunidades_2014_ENG.pdf) (last visited Dec. 1, 2016).

<sup>276</sup> Overview of Cuban Imports of Goods and Services and Effects of U.S. Restrictions, 35 Inv. No. 332-552, USITC Pub. 4597 (March 2016) (Final).

<sup>277</sup> *Trade in Goods with Cuba*, U.S. CENSUS BUREAU (June 29, 2017), <https://www.census.gov/foreign-trade/balance/c2390.html>.

goods—a number that itself is only roughly half of the 2008 figure of approximately \$711,500,00.00.<sup>278</sup> While this decline is hardly reassuring for investors, it is a reflection of global factors including reliance on Venezuela’s faltering economy, Cuban-imposed austerity measures, and better financial terms being offered by other, competing countries.<sup>279</sup>

It follows that with the new regulatory reinterpretations, potential trade with American entities will rebound healthily, especially when considering the elimination of the requirement that prevented vessels that had carried exported goods to Cuba from re-entering American waters for 180 days. Moreover, when considering America’s improving domestic economy, the geographic proximity of the two nations, and a laundry list of investment possibilities that the Cuban government has outlined, which itself only composes a small amount of Cuba’s investment needs and overall potential, the future for external investment in Cuba could be very bright indeed.

#### IV. CONTINUED VIABILITY OF THE CUBAN GOVERNMENT

##### A. Access to Information

As business relationships are fostered and more capital is inserted into the Cuban economy, it stands to reason that the state and status of the Cuban citizen will improve as well, as more investments and imports will translate into more jobs and opportunities. This “economic invasion” constitutes a foundational American policy objective, which is based on the belief that such an injection of capital will serve the interests of democracy by also fostering access to information.<sup>280</sup> In short, the United States is betting that a more affluent and informed populace will be more capable to control its own destiny.

It stands to reason that if the economic realities of the Cuban people expand, the Cuban government will experience difficulty in continuing to control the information accessed by the population. As Cuba attempts to hang on to power, there can be no doubt that it will look to China as an example of a central government that has found ways to control and counter the political impact of internet use through filtering content, monitoring online behavior or manufacturing its own content.

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<sup>278</sup> *Id.*

<sup>279</sup> See generally *U.S. food sales to Cuba continue to decline in 2011*, REUTERS, Feb. 22, 2012, <http://www.reuters.com/article/2012/02/22/cuba-usa-food-idUSN1E81L00S20120222>.

<sup>280</sup> See Barack Obama, *Presidential Policy Directive – United States–Cuba Normalization*, THE WHITE HOUSE (Oct. 14, 2016), <https://www.whitehouse.gov/the-press-office/2016/10/14/presidential-policy-directive-united-states-cuba-normalization>.

Nonetheless, for every measure taken to deprive access to information, the current state of global technology will likely ensure the proliferation of information whether the Cuban government assents to it or not.<sup>281</sup>

### *B. Cuban Governmental Reforms*

As the state of the Cuban economy improves and Cuban citizens reach toward prosperity, it seems reasonable to speculate that increased access to capital could put pressure on the Cuban government to make meaningful democratic and capitalistic reforms. In some ways, this movement has already begun. In 2015, for the first time since the Cuban Revolution, local elections were held featuring representatives that were not members of the communist party.<sup>282</sup> While both candidates took part in small elections, and neither were victorious, an important precedent was forged in that for the first time in decades questioning the direction and scope of the Cuban government was both safe and acceptable.<sup>283</sup>

Perhaps this new direction is the result of the leadership of Raúl Castro, who, after assuming power, has shown somewhat of a pragmatic streak. Indeed, the prospects of a slowing economy and dire financial circumstances have already forced the younger Castro's hand, and a 1 billion dollar Mariel free trade zone project is one such example.<sup>284</sup> There, Cuba has built a deep-water port intended to facilitate increased exports through competitive customs and tax incentives.<sup>285</sup> In an era with less restrictions on trade between the United States and Cuba, the Mariel Free Trade Zone could be a major economic engine for Cuban development. In such a scenario, capital from the project, and the private investment it brings, could find its way into the populace, thereby creating new and diverse product and service demands and leading Cuba to bring its trade policy in line with the rest of the world.

These rosy economic possibilities are also supported by the tangible characteristics of the Cuban populace, which is well-educated and healthy. As in many underutilized economies, these individuals are a vast untapped resource. And, at least in Cuba, the possibility of greater utilization looms on the horizon. Consequently, there is great potential for beneficial

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<sup>281</sup> *Id.*

<sup>282</sup> *Two Cuban dissidents concede defeat in local elections*, BBC (Apr. 20, 2015), <http://www.bbc.com/news/world-latin-america-32370843>.

<sup>283</sup> *See id.*

<sup>284</sup> Eoghan Macguire, *Cuba Libre: Could port herald new economic age for communist island?*, CNN (Nov. 20, 2013, 7:05 AM), <http://edition.cnn.com/2013/11/20/business/cuba-libre-could-new-port-communist/index.html>.

<sup>285</sup> Marc Frank, *Cuba: Port Upgrades and Free-Trade Zones*, AMERICAS QUARTERLY (Winter ed. 2014), <http://www.americasquarterly.org/content/cuba-port-upgrades-and-free-trade-zones>.

external and secondary effects of increased relations between the United States and Cuba.

## V. PRELUDE OR DEJA VU

It is said sometimes that history is cyclical. From this standpoint, the question then becomes whether these current developments are really something new, or if they are merely a reincarnation of the American dominance of early 1900's Cuba. To be sure, there is a legitimate argument in favor of the latter, based on the potential of new and exponential investment into Cuba. But that seems unlikely.

When the United States and Cuba last shared close ties, Cuba was emerging from hundreds of years of Spanish dominance. When American interests spread in the wake of the Spanish–American War, the nature of the cultural and economic influence left some to wonder whether Cuba was sovereign in name only. However, that impact was facilitated by the lack of definition at the time of what it meant to be distinctly and uniquely Cuban. That is no longer the case. While the horrors of the Cuban Revolution are well known, including the repression of the Cuban citizenry and the artificial choking of economic growth, one thing that it has allowed is the creation of a uniquely Cuban identity. What does this mean? It seems likely that while foreign investment will enhance the lives of ordinary Cubans, the idea and desire of an independent and unique Cuban state will remain in their hearts and minds. Thus, while there may be a future wherein Cuba has American enterprise and influence, it seems likely that it will be in addition to, not in spite of, the existence of distinctly Cuban business and culture.