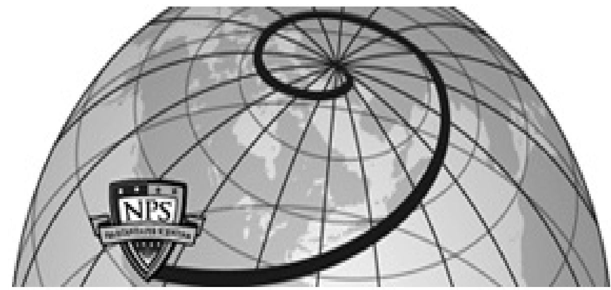
Calhoun
Institutional Archive of the Naval Postgraduate School



Calhoun: The NPS Institutional Archive

DSpace Repository

Faculty and Researchers | Faculty and Researchers' Publications

2009

Missteps and Next Steps in U.S.-Cuba Migration Policies

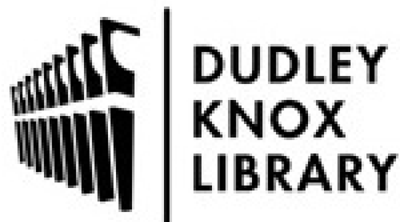
Bach, Robert

Center for Democracy in the Americas

Robert Bach, Missteps and Next Steps in U.S.--Cuba Migration Policies," in 9 Ways for US to Talk to Cuba and fur Cuba to Talk to US, ed. Sarah Stephens and Alice Dunscomb (Washington DC: Center for Demoncracy in the Americas, 2009).
http://hdl.handle.net/10945/60299

This publication is a work of the U.S. Government as defined in Title 17, United States Code, Section 101. Copyright protection is not available for this work in the United States.

Downloaded from NPS Archive: Calhoun



DUDLEY KNOX LIBRARY

Calhoun is the Naval Postgraduate School's public access digital repository for research materials and institutional publications created by the NPS community. Calhoun is named for Professor of Mathematics Guy K. Calhoun, NPS's first appointed -- and published -- scholarly author.

Dudley Knox Library / Naval Postgraduate School
411 Dyer Road / 1 University Circle
Monterey, California USA 93943

http://www.nps.edu/library

3

Missteps and Next Steps in U.S.-Cuba Migration Policies

Robert Bach

"Instability" is the focal point that drives nearly all debates on U.S.-Cuban migration. Senior U.S. officials watch for it — the U.S. Director of National Intelligence monitors Cuba closely for upheavals that may lead to a migration crisis — while Cuban officials, concerned that U.S actions will cause turmoil, accuse U.S. officials of violating migration accords to create instability on the island.[†]

Instability, however, is not something that has to be watched for, worried over, or surreptitiously created. It already exists. Instability defines, structures, and drives the U.S.-Cuban relationship — one that is beset by rumors, propaganda, and manipulation. The current challenge for U.S. policymakers is to forge stability and avoid unwise steps that spiral into a crisis. Historically, cooperation between the two governments has usually followed migration crises rather than preceded them. After fifty years of tragic consequences, it is time to reverse this trend; the sole course of action to do so is for the U.S. and Cuba to cooperate to prevent migration crises.

[†] Raúl Castro has claimed Cuba has surprised those "who were wishing for chaos to entrench and for Cuban socialism to collapse." See: Manuel Roig-Franzia, "Cuba's Call for Economic Détente; Raúl Castro Hits Capitalist Notes While Placating Hard-Line Party Loyalists," *Washington Post,* July 27, 2007.

Stabilizing migration between Cuba and the United States calls for changes in the way Cubans are treated under the Cuban Adjustment Act of 1966. Along with the economic embargo, the 1966 Act is one of the longest running sources of antagonism. At its inception, the 1966 Act made more sense. It responded to the presumption of persecution in Cuba at the height of revolutionary change and granted Cubans, unlike other nationalities, legal permanent residency (a "green card") after only one year's presence in the United States. The special treatment encouraged Cuban refugees to adjust quickly to the United States, supporting the U.S. government's efforts through extensive programs to cushion South Florida from the financial burden of resettling waves of new refugees. Today, however, the Act has the effect of encouraging illegal departures and disorderly migration.

Current U.S. policy works within a larger regional backdrop in which Cuba shares economic pressures similar to its Caribbean neighbors: it struggles to maintain long-term growth, and against poverty, limited consumption, and, increasingly, the visible inequality between wealthy tourists and the local populace. Such disparity results in steady illegal departures throughout the region, but this disorderly and often dangerous outflow does not necessarily signal political upheaval. One of the most common migration mistakes over Cuba is the U.S. failure to anticipate a level of "normal" flow, apart from bilateral relations. That misconception and perhaps purposeful misunderstanding can cause policy missteps. The U.S. and Cuba must build a stabilizing legal framework to head off a crisis, recognizing that any misunderstanding of each other's intentions is a serious menace. U.S. policies that have regime change as their first priority prevent cooperation on essential issues and cause harm to desired transitions in Cuba.[1] Preventing crises will depend on the willingness of both governments to understand what to expect and participate with each other in activities that serve both countries.

The Cuban Adjustment Act fosters this misunderstanding and serves as an incentive for Cubans to take great risks — by crossing the Florida Straits by raft or small boat, or risking money and life via human smug-

gling routes. According to U.S. investigators, smugglers typically are not paid until they deliver their Cuban passengers to dry land, after which the Cuban Adjustment Act guarantees their legal status. In short, the U.S. government encourages migrants to take unnecessary risk by offering a unique and exceptional reward unavailable to any other nationality. For many families trying to reunite with their relatives, it also makes the potential dangers of smuggling a little more acceptable.[2]

Unfortunately, cooperation in anti-smuggling operations, which had been one of the few areas of joint action, stalled and succumbed to suspicions between the two governments. Only in the last year or so have U.S. federal authorities increased enforcement against smugglers who bring Cubans into South Florida. These efforts reveal how a cooperative strategy could make a critical difference. Investigations show that many smugglers themselves are Cuban migrants who recently crossed the Florida Straits. The smuggling industry is loosely fragmented and poorly organized, but driven by lucrative profits — up to $60,000 a trip. Joint U.S.-Cuba law enforcement actions could save lives and significantly check what is still a nascent rather than sophisticated underground industry.

The smuggling industry is loosely fragmented and poorly organized, but driven by lucrative profits – up to $60,000 a trip. Joint U.S.-Cuba law enforcement actions could save lives and significantly check what is still a nascent rather than sophisticated underground industry.

Recent statistics show that human smuggling from Cuba increased during the last five or six years, following similar trends throughout the Caribbean.[3] The Cuban flow expanded into new routes through Mexico's Yucatán Peninsula, which mixed Cubans with Central American migrants heading by land to the Texas border. Smugglers also turned to "go-fast" boats that, until recently, could outrun most Coast Guard vessels. Increased enforcement off the coast of Mexico has Cuban migrants showing up in places in the Eastern Caribbean where they have not been seen before.

A recent agreement between Mexico and Cuba offers a constructive start for the region. It calls for increased cooperation between the Mexican Navy and the Cuban Border Guard on smuggling and illegal migration, and establishes terms for which Cuban citizens in Mexico without proper legal status would be returned to Cuba. With the U.S. Coast Guard also cooperating with the Mexican Navy in the Yucatán Channel, a broader regional agreement would help all countries prepare and participate in heading off smugglers adapting and searching for new routes and means.

Paradoxically, one of the most significant potential missteps that could trigger a U.S.-Cuban crisis could result from U.S. efforts to prepare for exactly such an event.

The nightmare scenario that U.S. planners use today to prepare for a migration crisis recalls the events of the 1980 boatlift from Cuba's Mariel harbor. The chaotic, spontaneous boatlift across the Florida Straits brought 125,000 Cuban citizens without screening into the United States in only a few months. The episode nearly provoked a U.S. military response and caused such domestic turmoil that President Carter attributed his reelection defeat in part to the public's reaction to the migration crisis.

Both governments made significant policy missteps in the midst of the crisis. The roots of the crisis in Cuba involved an excessively harsh halt to several years of free market experimentation. Domestic protest spilled into the streets in Cuba in ways rarely seen since the Revolution. But it was only after the U.S. stepped in to comment on the unrest and invite Cuban citizens to leave the island that the Cuban government took full advantage, turning the problem northward. Opening the border to families from Miami sending boats to pick up relatives, Cuba's government released tens of thousands of prisoners and hundreds of mental patients who also took the ninety mile trip to Florida.

U.S. officials believe another boatlift could result from political instability in Cuba, and have developed a migration emergency plan, Operation Vigilant Sentry, to pre-empt the presumed central lesson of Mariel: uncontrolled outflow. The plan's premise, as one U.S. official reports, is

"[I]f there are signs of a mass migration … the Coast Guard plans to set up a perimeter around Cuba"[4] to intercept migrants and immediately return them to Cuba, in hopes of discouraging more departures.

The plan calls for a massive operational deployment and an unprecedented public relations campaign designed to convince Cubans to stay onshore. But the U.S. strategy leaves the Cuban regime with few policy options to avoid escalation of a crisis. Bottling up the flow of refugees in the streets of Havana leaves the average Cuban citizen in the middle of a dangerous standoff, and does little to resolve whatever upheaval inside Cuba gave rise to a Mariel-style exodus. Strategically, Operation Vigilant Sentry does not solve key underlying problems and could even stand in the way of preemptive cooperation.[†]

The 1994 Migration Agreement, a step taken only after a migration crisis,[‡] set the stage for developing a more stable understanding of the Cuban outflow and led to more appropriate U.S. responses. In particular, the Agreement recognized officially a normal non-political level of emigration from Cuba that resembled the family and economic-induced migration from countries throughout the region. Negotiators agreed to an expected, normal number of annual departures. The Agreement also promoted binational parallel and joint cooperative activities to reduce disorderly movements from spinning out of control and becoming mass events. The Cuban government agreed, for instance, to patrol its borders and notify the U.S. Coast Guard about illicit departures from the island. The two governments agreed to a process of returning those intercepted at sea back to Cuba without repercussions.

[†] As an emergency response plan, Operation Vigilant Sentry has several admirable features: an interagency command structure, asset mobilization, and forward-thinking preparation of the Guantanamo base.

[‡] The balsero — or rafter — crisis was spurred by the collapse of Soviet sponsorship of Cuba, and its subsequent scarcity of food and other staples. Early attempts to thwart escapees and blame the U.S. was followed by the Castro government threatening to unleash another mass exodus (similar to the Mariel crisis in 1980). See: Daniel de Vise and Elane de Valle, "Cuban Balseros Helped Change the Political Flavor of Florida," *Miami Herald,* August 3, 2004.

But rather than building on a gradually stabilizing legal framework in advance of a new crisis, in 2004 the U.S. government under President George W. Bush reversed course.

It imposed stricter limits on family visits, cash remittance flows, travel, and professional exchanges to the island. The rationale was to withhold from Cuba's communist regime valuable financial assets taken through taxes or local expenditures of U.S. dollars.

Ironically, family remittances are one of the only sources of support for Cuban households that confer semi-independence economically and socially from Cuban authorities. In this limited space of personal independence rests the seeds of liberty. Though relatively small, remittances allow family members a greater range of choice about their daily activities. By restricting remittances, U.S. authorities undermine their own goals, depriving families of simple survival benefits and the support they need to be less dependent on the Cuban state.

In the same vein, suppressing family visits heightens the likelihood of a migration crisis. In today's transnational world, migration is a normal social endeavor. If there were no sanctions, Cuba would resemble countries such as Mexico and the Dominican Republic with a substantial share of its population dependent on family members earning wages in the United States. Even under current constraints in Cuba, rare visits with parents and relatives are more than personal — they also provide income vital to household survival. Absent these stabilizing and predictable resources, Cuban families need to find alternate means of support. Migrating northward, if and when they can, is one of those alternatives.

In the U.S., migration out of Cuba is often projected through the prism of politics. For example, the head of the U.S. Interests Section in Havana interpreted an increase in migration as popular reaction to Raúl Castro's succession to power: "The numbers continue to rise — that's the response of the Cuban people. Why do so many people want to leave the country?"[5] Rather than political confrontation through aggressive plans and warnings, however, the strategic challenge is to find alternatives to Cuba's internal problems becoming U.S.

problems. The U.S. goal should be to prevent decisions that raise the migration issue to a high level national security concern.

Specific migration policy reforms would be a start. Greater opportunities for family visits and remittance flows, reform of the Cuban Adjustment Act, joint anti-smuggling operations, and a reinvigorated exchange of professionals would help reduce the systemic instability that drives out-migration. Perhaps more importantly, reforms would expand information flow between the countries. Increased transparency and mutual understanding would reduce the extent to which migration remains a central impasse between the U.S. and Cuba.

A first step: reinstitute temporary visits across the Florida Straits in both directions. Temporary visits could be organized through various visa regimes. If abuses exist with academic and professional exchanges, as the Bush adminstration alleged, alternate exchange activities organized through respected institutions could be easily arranged. Undoubtedly, temporary visas would help to depoliticize migration processing.

Next, the U.S. needs to work with its regional partners to incorporate Cuba into the broad framework for addressing migration problems. The arguments for and against visa and travel restrictions have been played out repeatedly since the Kennedy and Johnson administrations. Charges and countercharges of process manipulation cause recurring tensions between the governments and must be corrected.

As part of these regional changes, the United States also needs to reform the Cuban Adjustment Act. The United States now has better ways to assist asylum seekers and humanitarian cases than the blanket procedures of 1966, including principles and procedures that apply to all nationalities. A modern U.S. asylum system provides protection from persecution through case-by-case review, and contains mechanisms for returning, if appropriate, those interdicted on land or sea to their country of origin.

Repeal of the Cuban Adjustment Act would also put an end to the so-called wet foot/dry foot policy. The policy emerged in the early 1990s as a way to respond to the rafter crisis without repealing the

Cuban Adjustment Act.[6] The compromise developed new rules on whether a person could be returned to Cuba or not depending on whether their interdiction occurred at sea or on land. Interdiction at sea (wet foot) meant that the Cuban migrant was not yet covered by the Cuban Adjustment Act. Once on land, the outdated law prevailed. At the time, the compromise introduced a system of return to Cuba for those who were interdicted at sea and helped to bring the Cuban government a step closer toward a normal legal framework by decriminalizing out-migration. It also moved U.S. policy toward treating all nationalities equivalently. Today, as part of a common, cooperative regional migration framework, both Cuba and the United States could complete these earlier moves.

Still, while bilateral and multilateral reforms will be enormously helpful, they will not be enough. The time has arrived for a new vision of U.S.-Cuban relations. U.S. intelligence officials have put their finger on the force that will propel future change. The key is "going to be the fourth generation in Cuba" who are "thinking new thoughts" and "asking hard questions."[†] Of course, generational change is not unique to Cuba. Generations of Cubans resettled in the United States are also waiting and watching them, hopeful of change but not clear on what it will bring. As both sides wait, opportunities are being lost. Behind current preparations for a migration crisis is a failure to imagine a new, stable Caribbean region. Both states will have to make serious reforms, internal and external, that recognize a normal migration policy reflecting realities of poverty, family interdependence, and regional vulnerabilities.

Despite a degree of "instability," migration flows are part of normal, healthy international relations. They fuel economic cooperation, stimulate vibrant exchange of business skills, and inspire citizens of the region through exchanges, visits, and educational partnerships.

[†] National Intelligence Director Mike McConnell added, "And what my concern is, there's going to be some instability in that process." See: Pablo Bachelet, "U.S. Alerted to Cuba Migration, Chávez Weapons," February 27, 2008.

Region-wide migration can become an instrument of innovation and change. Regional engagement will replace decades of stalemate and provide a new generation of Cubans with reasons to work constructively with the United States, and lend new generations of Americans more insight into Cuba. A safe — and more stable — movement of peoples throughout the region gives hope for an end to fifty years of tragic consequences.

Biographies

Robert Bach

Robert Bach is an internationally recognized expert on immigration and border and transportation security issues. He teaches Strategic Planning at the Center for Homeland Defense and Security, Naval Postgraduate School (NPS) in Monterey, California and is a lead instructor for the Center's Executive Leaders Program. From 1993 to 2000, Dr. Bach served with the U.S. Department of Justice as Executive Associate Commissioner for Policy, Strategic Planning and Programs for the Immigration and Naturalization Service. He has worked extensively on Cuban migration issues from both his academic and government positions. Dr. Bach has been a senior fellow at the Carnegie Endowment for International Peace and the Inter-American Dialogue, and was a professor at the State University of New York at Binghamton from 1978 to 1996. During that time, he served for several years as a member and chair of the Cuba Taskforce of the Latin American Studies Association.

Randy Beardsworth

Randy Beardsworth is a partner with Catalyst Partners, and has more than thirty years of operational experience, with expertise in maritime security, maritime domain awareness, border and transportation security, law enforcement and immigration policy. As Assistant Secretary for Strategic Plans at the U.S. Department of Homeland Security

9 Ways

For US to Talk to Cuba and For Cuba to Talk to US

THE CENTER FOR DEMOCRACY IN THE AMERICAS

Center for Democracy
IN THE
AMERICAS

The Center for Democracy in the Americas (CDA) is devoted to changing U.S. policy toward the countries of the Americas by basing our relations on mutual respect, recognizing positive models of governance in the region, and fostering dialogue particularly with those governments and movements with which U.S. policy is at odds.

The Center for Democracy in the Americas is an independent, nonprofit organization that does not receive financial support from the U.S. or any foreign government.

For this document, CDA sponsored a group of independent authors, varied in viewpoint and background, to write on a vital foreign policy issue: U.S.-Cuba cooperation. The *9 Ways* report compiled and produced by CDA for publication, and available on its website, reflects the independent thinking and contributions of each of these authors. All statements of fact and expressions of opinion contained in this publication are solely those of each of the contributing authors, and do not necessarily reflect the opinions or positions of CDA.

For further information about CDA or this report, please contact:
The Center for Democracy in the Americas
P.O. Box 53106
Washington, DC 20009
www.democracyinamericas.org

Copyright ©2009 by The Center for Democracy in the Americas.
All rights reserved.
Printed in the United States of America.
Cover design: *Tom Aley*
Layout and design: *Terry J. Allen*

This report may not be reproduced in whole or in part, in any form beyond the reproduction permitted by Sections 107 and 108 of the U.S. Copyright Law Act (17 U.S.C. Sections 107 and 108) and excerpts by reviewers for the public press, without express written permission from The Center for Democracy in the Americas.