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## Traveling to Cuba? Sorry, It's Closed

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## TRAVELING TO CUBA? SORRY, IT'S CLOSED

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## I. INTRODUCTION

In 1502, when Christopher Columbus landed in Cuba, he called it “the most beautiful land human eyes have ever seen.”<sup>1</sup> Since then, this phrase has been repeated many times by exiled Cubans, tourists, and writers in describing Cuba’s scenery.<sup>2</sup> With thousands of miles of coastline, Cuba is home to beautiful beaches, towering mountains, rolling hills, and colorful coral reefs.<sup>3</sup> Approximately 11,308,764 people currently reside in Cuba.<sup>4</sup> However, unlike other islands in the Caribbean, Cuba is currently the only communist nation in the Americas.<sup>5</sup>

Due to its communist state, the United States government severely restricts travel to the island of Cuba.<sup>6</sup> The Trading with the Enemy Act<sup>7</sup> prohibits travel to Cuba unless the individual is licensed.<sup>8</sup> A violation of this restriction involves criminal sanctions, including up to ten years in prison and civil penalties of up to \$50,000 per person.<sup>9</sup> Despite the impending possibility of criminal prosecution, it is estimated that 200,000 Americans successfully visited Cuba in 2003.<sup>10</sup> Americans are able to circumvent the law, which is less than copiously enforced by United States officials, by first traveling to Canada or Mexico and then flying into Cuba.<sup>11</sup>

Part II of this article provides a brief background on the history of Cuba by focusing on Fidel Castro’s takeover of Cuba and its effect on tourism. Part III discusses restrictions President Kennedy imposed on travel to Cuba and the Cuban Democracy Act.<sup>12</sup> Part IV briefly discusses the Office of For-

1. Daniel J. Whittle et al., *International Tourism and Protection of Cuba’s Coastal and Marine Environments*, 16 TUL. ENVTL. L.J. 533, 537 (2003).

2. *Id.*

3. *Id.* at 537–38.

4. K. Lynn Stoner, *Cuba*, in MICROSOFT ENCARTE ONLINE ENCYCLOPEDIA 1 (2004), at [http://encarta.msn.com/encyclopedia\\_761569844/Cuba.html](http://encarta.msn.com/encyclopedia_761569844/Cuba.html) (last visited Jan. 8, 2005).

5. *See id.*

6. OFFICE OF FOREIGN ASSETS CONTROL, U.S. DEPARTMENT OF THE TREASURY, CUBA: WHAT YOU NEED TO KNOW ABOUT THE U.S. EMBARGO 1, available at <http://www.treas.gov/offices/enforcement/ofac/sanctions/+11cuba.pdf> (last visited Jan. 8, 2005) [hereinafter OFAC CUBA].

7. 50 U.S.C. app. § 5(b)(1) (2000).

8. OFAC CUBA, *supra* note 6, at 2.

9. 50 U.S.C. app. § 16 (2000).

10. Bruce Schimmel, *Closing Cuba*, Philadelphiacitypaper.net, Oct. 16–22, 2003, at <http://citypaper.net/articles/2003-10-16/canon.shtml> (last visited Jan. 8, 2005).

11. International Information Programs, U.S. Department of State, *Enforcement of U.S. Travel Restrictions to Cuba to be Enhanced*, at <http://usinfo.state.gov/gi/Archive/2003/Oct/15-270865.html> (last visited Jan. 8, 2005) [hereinafter International Informational Programs].

12. 22 U.S.C. §§ 6001-10 (2000).

eign Assets Control's role in the American government's effort to restrict travel to Cuba. Part V details travel restrictions to Cuba as they existed before June 30, 2004. Part VI analyzes two major United States Supreme Court cases which upheld the validity of restricting travel to Cuba. Part VII details the new regulations that took effect on June 30, 2004, which further restrict travel to Cuba. Part VIII discusses a recent case as an example of how serious the United States government is about the new restrictions. Part IX stresses the importance of continuing to restrict travel to Cuba in an effort to oppress Fidel Castro's government and prevent American dollars from further fueling his economy. Finally, Part X concludes by explaining how enforcing the stringent travel restrictions is instrumental in eliminating Fidel Castro's communist regime.

## II. BRIEF HISTORY OF THE ISLAND OF CUBA

### A. *Fidel Castro Takes Power*

For over 400 years, Cuba was under the control of Spain.<sup>13</sup> In 1898, with the assistance of the United States, Cuba successfully fought for its independence from Spain and was declared an independent nation under the protection of the United States.<sup>14</sup> Around 1902, Cuba began to lessen the United States' influence and began to function under its own government for the first half of the twentieth century.<sup>15</sup> In 1934, Fulgencio Batista took over the country as president and military dictator.<sup>16</sup> Under Batista, the Cuban government became corrupt, its citizens revolted against Batista, and the infamous "Cuban Revolution" began.<sup>17</sup>

On January 1, 1959, the Cuban revolution successfully brought down Batista's government.<sup>18</sup> One month later, in February of 1959, Fidel Castro proclaimed himself "el commandante" ("the commander") of Cuba's new revolutionary government.<sup>19</sup> In his first year as Cuba's new leader, Castro passed over 1500 new laws supposedly aimed at distributing wealth to the citizens of Cuba and securing investments from foreign non-capitalist countries.<sup>20</sup> Castro gained the support of the Cuban people by riding in tanks

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13. Stoner, *supra* note 4, at 1.

14. *Id.*

15. *Id.*

16. *Id.*

17. *Id.*

18. Stoner, *supra* note 4, at 1.

19. *Id.*

20. *Id.*

through the streets preaching how he had liberated the citizens from the Batista government and profoundly promising to uphold Cuba's constitution.<sup>21</sup> To ensure he had the support of his people, Castro refused to lay down all arms until all other revolutionary groups accepted him as Cuba's new leader.<sup>22</sup> Finally, in 1961, the revolutionary Cuban Communist Party was formed and still remains in power today.<sup>23</sup>

### B. *Tourism in Cuba*

For more than 150 years, Cuba has been a particularly favorite vacation spot for many Americans.<sup>24</sup> Even today, Cuba's charm and picturesque scenery continues to be a beloved location for United States travelers.<sup>25</sup> Despite the country's government turmoil over the last forty-five years, American interest in the island has yet to be curtailed.<sup>26</sup> This interest is evidenced by the continued growth of American tourism in Cuba.<sup>27</sup> Tourism significantly contributes to the Cuban economy and has been the only sector with continued growth in the Castro era.<sup>28</sup> It is estimated that in 1990, \$243 million were injected into the Cuban economy from tourism.<sup>29</sup> That figure has increased by 500%, and travel to Cuba contributed more than \$1.6 billion in the year 2002.<sup>30</sup>

The Castro government continuously assures the people of Cuba they will have a share in the country's national goods.<sup>31</sup> Despite these promises, Cubans are strictly banned from all tourist areas, including the beautiful beaches and hotels.<sup>32</sup> For example, shopping in luxury stores and eating in fine restaurants is reserved only for foreigners.<sup>33</sup> Castro does so to prevent Cuban citizens from gaining access to valuable foreign currency.<sup>34</sup> These restrictions are forcing Cubans to resort to desperate measures in an effort to

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21. *Id.*

22. *Id.*

23. Stoner, *supra* note 4, at 4. Interestingly, despite the reigning power, to date, the Cuban Constitution has yet to be upheld. *Id.*

24. Whittle et al., *supra* note 1, at 553.

25. *Id.*

26. *Id.*

27. *Id.* In fact, the regulations appear to make people want to visit it all the more. *Id.*

28. Stoner, *supra* note 4, at 3.

29. *Id.*

30. *Id.*

31. *Id.*

32. *Id.*

33. Stoner, *supra* note 4, at 3.

34. *Id.*

gain access to United States dollars on the island.<sup>35</sup> Highly educated males and females are abandoning their traditional jobs, opting for other extreme career paths.<sup>36</sup> For example, males are beginning to drive cabs and females have resorted to prostitution (now at an all time high) just to make ends meet.<sup>37</sup>

### III. TRAVEL TO CUBA BECOMES HIGHLY RESTRICTED

#### A. *President Kennedy Restricts Travel to Cuba*

On February 3, 1962, through Presidential Proclamation No. 3447, President John F. Kennedy imposed an embargo on all transactions with Cuba.<sup>38</sup> President Kennedy cited to section 2370 of the Foreign Assistance Act of 1961,<sup>39</sup> which granted him the authority to impose such restrictions.<sup>40</sup> Section 2370(a)(1)-(2) provides that:

(1) No assistance shall be furnished under this chapter to the present government of Cuba. As an additional means of implementing and carrying into effect the policy of the preceding sentence, the President is authorized to establish and maintain a total embargo upon all trade between the United States and Cuba.

(2) Except as may be deemed necessary by the President in the interest of the United States, no assistance shall be furnished under this chapter to any government of Cuba, nor shall Cuba be entitled to receive any quota authorizing the importation . . . or to receive any other benefit under any law of the United States, until the President determines that such government has taken appropriate steps according to international law standards to return to United States citizens . . . or to provide equitable compensation to such citizens and entities for property taken from such citizens and entities on or after January 1, 1959, by the Government of Cuba.<sup>41</sup>

Because section 2370(a)(2) makes returning property taken from United States citizens a condition precedent to receiving a "benefit," any attempt to

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35. *See id.*

36. *Id.*

37. *Id.*

38. Maria L. Pagan, *U.S. Legal Requirements Affecting Trade with Cuba*, 7 PACE INT'L L. REV. 485, 488 (1995).

39. 22 U.S.C. § 2370 (2000).

40. Pagan, *supra* note 38, at 487.

41. § 2370(a)(1)-(2).

ease the restrictions against Cuba would have to essentially repeal this law, unless, of course, the Cuban government chooses to return all property.<sup>42</sup> Further, there is no statutory language indicating specific time restrictions on the expiration of the embargo or guidance on when, or how, it may end.<sup>43</sup> Although the current President could always terminate the embargo by exercising his foreign powers, the regulations would still exist in the texts.<sup>44</sup>

### B. *The Cuban Democracy Act*

In 1992, thirty years after President Kennedy implemented the Cuban embargo, Congress passed the Cuban Democracy Act ("CDA").<sup>45</sup> "The CDA contains a Congressional finding that the [Cuban] government continues to disregard human rights, continues to support subversive activities around the world, has decreased the well-being of the Cuban people, and shows no signs of change despite the collapse of Communism around the world."<sup>46</sup> The purpose of the CDA is to provide for a smooth transition for the communist government of Cuba to become a democratic one.<sup>47</sup> Additionally, it punishes the Cuban government while assisting the people of Cuba.<sup>48</sup>

In order to persuade other countries to support the United States' position, the CDA contains provisions encouraging other countries to adopt the Cuban Embargo while punishing those who do not.<sup>49</sup> Sanctions include denying countries eligibility for assistance under the Foreign Assistance Act of 1961 or sales under the Arms Export Control Act.<sup>50</sup> Additionally, countries that do not follow the United States' policy towards Cuba are not eligible for a reduction of any debt owed to the American government.<sup>51</sup> Under the CDA, the President of the United States has the power to waive the restrictions if he determines that Cuba has: 1) held democratic elections; 2) allowed other parties to campaign for such elections and allowed the media full access to the candidates; 3) shown respect to the citizens of Cuba by

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42. Pagan, *supra* note 38, at 487.

43. *Id.* at 488.

44. *Id.*

45. Christine Zack, Comment, *Globalization's Unlikely Opportunist: Castro's Cuba Shapes the Paradigm for Economic and Political Stability in Latin America*, 11 TUL. J. INT'L & COMP. L. 355, 360 (2003).

46. Pagan, *supra* note 38, at 499.

47. 22 U.S.C. § 6002(1) (2000).

48. Pagan, *supra*, note 38, at 499.

49. *See* 22 U.S.C. § 6003 (2000).

50. *Id.*

51. § 6003(b)(1)(B).

respecting their “civil liberties and human rights;” and 4) has committed itself to Cuba’s constitutional change.<sup>52</sup> Although a delineated power, the above conditions appear very subjective and their interpretation will most likely depend on the political affiliation of the President of the United States at the time.

Finally, the CDA provides relief to the Cuban community in a number of ways.<sup>53</sup> First, it allows exportation of food and medicine to Cuba within certain restrictions.<sup>54</sup> For example, there is a prohibition on exporting medicine if the likelihood exists that the medicine’s purpose is for torture or other forms of human rights abuse.<sup>55</sup> Secondly, the CDA permits telecommunication services between the United States and Cuba, but only to the extent necessary to provide “efficient and adequate telecommunications.”<sup>56</sup> Further, the CDA allows these transactions with Cuba only if they benefit the Cuban people and not the Cuban government.<sup>57</sup>

#### IV. THE OFFICE OF FOREIGN ASSETS CONTROL

The Office of Foreign Assets Control (“OFAC”) operates under the United States Treasury Department.<sup>58</sup> In an effort to preserve United States’ foreign policy, OFAC’s principal task is enforcing embargoes and economic sanctions against foreign countries.<sup>59</sup> OFAC is the successor of the former Office of Foreign Funds Control (“OFFC”), which was established at the commencement of World War II.<sup>60</sup> OFFC’s principle purpose was to act under the Trading with the Enemy Act (“TWEA”) and to prevent dealings with the Nazis.<sup>61</sup> As the years progressed, OFFC expanded and began regulating more countries.<sup>62</sup> In December, 1950, President Truman formally created OFAC, and declared a national emergency under TWEA after blocking assets, subject to United States jurisdiction, from China and North Korea.<sup>63</sup>

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52. 22 U.S.C. § 6007(a) (2000).

53. 22 U.S.C. § 6004 (2000).

54. § 6004(b)-(c).

55. § 6004(c)(2)-(3).

56. § 6004(e)(1)-(2).

57. 22 U.S.C. § 6009(a) (2000).

58. R. Richard Newcomb, *Office of Foreign Assets Control*, 705 PRAC. L. INST. 397, 401 (1994).

59. *Id.*

60. United States Dep’t of the Treasury, *Office of Foreign Assets Control: Frequently Asked Questions*, at <http://www.treas.gov/offices/enforcement/ofac/faq/index.html> (last visited Jan. 8, 2005) [hereinafter OFAC FAQ].

61. *Id.*

62. Newcomb, *supra* note 58, at 401.

63. *Id.* at 444.



Currently, OFAC is the lead agency enforcing restrictions against Cuba, including travel restrictions.<sup>64</sup> The International Emergency Economic Powers Act<sup>65</sup> (“IEEPA”) grants OFAC the authority to oversee restrictions on Cuba.<sup>66</sup> OFAC, combined with the President’s wartime and national emergency powers, is the means by which the American government regulates transactions with foreign countries.<sup>67</sup>

## V. TRAVEL RESTRICTIONS TO CUBA BEFORE JUNE 30, 2004

### A. Fully Hosted Travelers

One of the most popular methods for American travel to Cuba was under the “fully hosted travel” provision.<sup>68</sup> The “fully hosted travel” provision meant that an American could legally travel to Cuba if the trip, and all associated costs, were paid by a person outside of the United States, and United States’ jurisdiction.<sup>69</sup> All travel which fell into this category was deemed “authorized” travel.<sup>70</sup>

### B. Returning Goods to the United States

While in Cuba, Americans were permitted to purchase merchandise and take it home to the United States.<sup>71</sup> The only limitations were that the merchandise must cost under \$100 in value and the item must be for the traveler’s personal use.<sup>72</sup> Alternatively, visitors were free to return an unlimited amount of informational materials, such as books and magazines, back to the United States.<sup>73</sup>

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64. *Id.* at 401.

65. 50 U.S.C. § 1701 (2000).

66. Newcomb, *supra* note 58, at 401–02.

67. *Id.*

68. Cuban Assets Control Regulations, 69 Fed. Reg. 33,768 (June 16, 2004) (to be codified at 31 C.F.R. pt. 515).

69. Cuban Assets Control Regulations, 31 C.F.R. § 515.420 (2003).

70. *Id.*

71. § 515.560(c)(3).

72. *Id.*

73. *Id.*

### C. *Visiting Family*

Travel restrictions to Cuba were lenient for those who had family members on the island.<sup>74</sup> A person with a “close relative,” including second cousins, could visit their family once every twelve months, provided they obtained a general license from OFAC.<sup>75</sup> The traveler could stay indefinitely, since there was no limitation placed on the length of stay.<sup>76</sup> Additional visits within the same twelve-month period were also permitted.<sup>77</sup> Further, while visiting their family, the traveler was allowed to spend up to the State Department’s then \$167 per diem allowance.<sup>78</sup>

### D. *Educational Activities*

A large part of travel to Cuba is comprised of college students and faculty engaged in educational programs.<sup>79</sup> OFAC issues specific licenses to academic institutions that are accredited by a national or regional accreditation association that permits travel to Cuba.<sup>80</sup> However, these licenses must be renewed every two years.<sup>81</sup> Once the institution has applied and is granted a license, its students and faculty may travel to Cuba without further intervention by OFAC, provided that they fall into one of the following five categories.<sup>82</sup> The first category encompasses undergraduate or graduate students participating in a “structured educational program . . . as part of a course offered at [their] accredited U.S. college or university.”<sup>83</sup> Students traveling “must carry a letter” from their school confirming: the student’s enrollment at all times, the institution’s license number, and that the travel is part of their educational program.<sup>84</sup> The second category involves individuals engaging in “[n]on-commercial academic research” for the purpose of securing

74. *See* § 515.561.

75. Cuban Assets Control Regulations, 69 Fed. Reg. 33,769 (June 16, 2004) (to be codified at 31 C.F.R. pt. 515).

76. *Id.*

77. *Id.* A specific license, usually granted, was also needed for an additional visit occurring within the same twelve month period. *Id.*

78. *Id.* However, a visitor could spend more than the per diem on unexpected expenses that arose while in Cuba. Cuban Assets Control Regulations, 69 Fed. Reg. at 33,769.

79. DeWayne Wickham, *Powell Prescribes Cuba Travel Waiver for U.S. Medical Students*, USA TODAY, July 7, 2004, at A11.

80. Cuban Assets Control Regulations, 31 C.F.R. § 515.565(a)(1) (2003).

81. § 515.565(a)(1).

82. § 515.565(a)(2).

83. § 515.565(a)(2)(i).

84. *Id.*

a professional degree.<sup>85</sup> Persons who travel under this category must also have a letter from their institution confirming that the travel is not only part of the researcher's educational program, but also that the course work will be accepted for credit in the United States.<sup>86</sup> The third category is for students who are enrolled in an accredited undergraduate/graduate course of study at a "Cuban academic institution."<sup>87</sup> Fourth, a person regularly employed at an accredited learning institution who is planning to teach at a "Cuban academic institution" may also travel to Cuba.<sup>88</sup> Finally, full-time employees of a licensed institution who are coordinating the above named activities may also travel.<sup>89</sup> As all other categories of education-based visitors, these individuals must also carry a letter stating they are employed activities coordinators and include their employer's OFAC license number.<sup>90</sup>

### E. *Remittances*

American citizens were permitted to send Cuban nationals \$300 once every four months.<sup>91</sup> When traveling to Cuba, the authorized amount of money a traveler could carry was \$3000.<sup>92</sup> Banks, or other forms of depository institutions within the United States jurisdiction, could act as forwarders for remittances from Americans to Cuban nationals.<sup>93</sup> These forwarders were not required to obtain any kind of license from OFAC before engaging in such activities.<sup>94</sup>

## VI. CHALLENGES TO THE VALIDITY OF TRAVEL RESTRICTIONS TO CUBA

### A. *Zemel v. Rusk*

Prior to the United States breaking diplomatic relations with Cuba in 1961, passports were not required for travel within the Western Hemi-

85. § 515.565(a)(2)(ii).

86. *Id.*

87. § 515.565(a)(2)(iii). This category of students may also travel, provided they meet the same three requirements as the students in the "structured educational program" category. *See id.*

88. § 515.565(a)(2)(iv). Once again, these individuals must carry a letter at all times stating that they are employees of an American institution and the appropriate license number. *Id.*

89. § 515.565(a)(2)(vii).

90. *Id.*

91. § 515.570(a).

92. § 515.560(c)(4)(i).

93. § 515.572(a)(3).

94. *Id.*

sphere.<sup>95</sup> On January 16, 1961, the United States Department of State removed Cuba from the list of countries in which a passport was not required for travel.<sup>96</sup> In a landmark case, *Zemel v. Rusk*,<sup>97</sup> Zemel applied to have his passport validated for travel to Cuba “to satisfy [his] curiosity . . . and to make [him] a better informed citizen.”<sup>98</sup> Because of the change in law, Zemel’s application was rejected and he subsequently filed suit in federal district court based on three counts: 1) “that he was entitled [to travel] under the [United States] Constitution . . . and to have his passport validated;” 2) “that the Secretary’s restrictions upon travel to Cuba were invalid;” and 3) “that the Passport Act of 1926 and [section] 215 of the Immigration and Nationality Act of 1952 were unconstitutional.”<sup>99</sup> In addition, Zemel prayed that Rusk, the Secretary of State, and the Attorney General “be enjoined from interfering with such travel.”<sup>100</sup> The United States District Court for the District of Connecticut “granted the Secretary of State’s motion for summary judgment and dismissed the action against the Attorney General.”<sup>101</sup> Following dismissal, Zemel made a direct appeal to the United States Supreme Court pursuant to federal statute.<sup>102</sup>

The Supreme Court found that the Passport Act granted the Executive Branch the authority to refuse validation of passports for travel to Cuba.<sup>103</sup> The Court reasoned that the continuous interpretation that the Department of State possesses authority to impose restrictions to certain countries must be considered in construing the Passport Act.<sup>104</sup> Chief Justice Warren noted that in 1952, Congress enacted legislation relating to passports, but despite the many executive impositions of area restrictions, it left “untouched the broad rule-making authority granted in the earlier [Passport] Act.”<sup>105</sup> Unlike the applicant in *Kent v. Dulles*,<sup>106</sup> where Mr. Kent was denied a passport based

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95. *Zemel v. Rusk*, 381 U.S. 1, 3 (1965).

96. *Id.*

97. *Id.* at 1.

98. *Id.* at 4.

99. *Id.*

100. *Zemel*, 381 U.S. at 4.

101. *Id.* at 5.

102. *Id.* at 4–5. A direct appeal to the Supreme Court from a district court can be made pursuant to 28 U.S.C. § 1253. *Id.* at 5.

103. *Id.* at 7.

104. *Zemel*, 381 U.S. at 8–11.

105. *Id.* at 12.

106. 357 U.S. 116 (1958). The two plaintiffs in *Kent* were denied validation of their passports because of their refusal to file an affidavit concerning their membership in the Communist Party. *Id.*

on his political beliefs or associations, the restrictions in *Zemel* applied to everyone regardless of beliefs and were therefore constitutionally upheld.<sup>107</sup>

Travel restrictions to specific countries are nothing new, and in fact they have become quite common since World War II.<sup>108</sup> For example, in the late 1940's, "[t]ravel to Yugoslavia was restricted ... [due to] a series of incidents involving American citizens" within Yugoslavia.<sup>109</sup> Like Yugoslavia, "[t]ravel to Hungary was [also] restricted between December 1949 and May 1951," and once again after 1951.<sup>110</sup> In an action similar to the new travel restrictions to Cuba, the Department of State began to stamp passports to Czechoslovakia "not valid for travel" and "declared that all passports outstanding" were also "not valid for such travel."<sup>111</sup> Using these past restrictions as a basis, the Supreme Court found *Zemel's* constitutional rights were not being abridged by area restrictions prohibiting travel to Cuba.<sup>112</sup> Additionally, the Court noted that a liberty cannot be inhibited without due process of law does not mean that it can under no circumstances be inhibited and found these restrictions to be justified by the "weightiest considerations of national security."<sup>113</sup> The failure to validate *Zemel's* passport resulted in a certain action being prevented and is not a violation of an individual's First Amendment right.<sup>114</sup> "The right to speak and publish does not carry with it the unrestrained right to gather information" in order to make one a more informed citizen.<sup>115</sup> Finally, the Passport Act does not grant Congress complete unfettered freedom to act as they wish and the only restrictions authorized are those that are proper in light of Congress's prior administrative practices.<sup>116</sup>

## B. *Regan v. Wald*

In 1977, regulation 560<sup>117</sup> was added to the Cuban Assets Control Regulations.<sup>118</sup> This added provision permitted almost all travel-related transac-

107. *Zemel*, 381 U.S. at 13.

108. *Id.* at 10.

109. *Id.*

110. *Id.* (citing 22 Dept. State Bull. 399).

111. *Id.*

112. *See generally* 381 U.S. at 13–18.

113. *Id.* at 14–16.

114. *Id.* at 16–17.

115. *Id.* at 17.

116. *Id.* at 17–18.

117. Cuban Assets Control Regulations, 31 C.F.R. § 515.560 (2003).

118. *Regan v. Wald*, 468 U.S. 222, 223 (1984).

tions to Cuba, thus creating an exception to regulation 201(b)'s<sup>119</sup> prohibition on such transactions.<sup>120</sup> Simultaneous to the amendment of regulation 560, the International Emergency Economic Powers Act was enacted in order to allow the President to exercise his emergency economic powers.<sup>121</sup> At first glance, it appeared the President had been given authority which he already had under section 5(b) of TWEA, but there was one significant difference.<sup>122</sup> Instead of the President having to declare a new national emergency to continue the Cuban embargo, Congress included a "grandfather clause."<sup>123</sup> Under the grandfather clause, despite the changes to the TWEA, "'authorities conferred upon the President by section 5(b) . . . which were being exercised with respect to a country on July 1, 1977, as a result of a national emergency declared by the President before such date, may continue to be exercised.'"<sup>124</sup>

In 1982, regulation 560 was amended to include a restriction on the various types of American travel related activities in Cuba.<sup>125</sup> These restrictions eliminated travel to Cuba for tourist and non-governmental business purposes.<sup>126</sup> The new regulation 560 permitted travel only for visiting "close relatives," gathering news, and other "official" visits.<sup>127</sup> However, not all Americans were satisfied with the new regulation.<sup>128</sup> In *Wald*, the plaintiffs challenged the United States imposed travel restrictions to Cuba pursuant to an amendment under the grandfather clause of section 5(b) of the TWEA.<sup>129</sup> According to these authorities, the President may regulate transactions involving any property in which any foreign country or any national thereof has an interest.<sup>130</sup> This was the precise restriction *Wald* challenged on the basis that the grandfather clause required the President to declare a national emergency in order to continue the same economic hardships that previously existed under TWEA.<sup>131</sup> The Supreme Court overruled the Court of Appeals for the First Circuit in a 5-4 decision, and found that the grandfather clause, together with the language in section 5(b), granted the authority to regulate all travel-related transactions with Cuba since they were being exercised on

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119. § 515.201(b).

120. *Wald*, 468 U.S. at 222.

121. *Id.*

122. *Id.* at 228.

123. *Id.* at 228-29.

124. *Id.* at 228-29 (quoting 91 Stat. 1625 (1977)).

125. *Wald*, 468 U.S. at 229.

126. *Id.* at 229-30.

127. *Id.* at 229.

128. *Id.*

129. *Id.* at 229.

130. 50 U.S.C. app. § 5(b)(1) (2000).

131. *Wald*, 468 U.S. at 228.

July 1, 1977.<sup>132</sup> The Court further reasoned that “[it] follow[ed] from a natural reading of the grandfather clause.”<sup>133</sup> Additionally, the Court explained that nothing in the legislative history of the grandfather clause supported the contention that Congress meant only to apply grandfather restrictions “in place on July 1, 1977.”<sup>134</sup> Further, if the Court was to eliminate the President’s authority to alter travel restrictions, it would have created the situation which the grandfather clause was intended to avoid.<sup>135</sup> Finally, the Court relied on the strong deference to executive decisions in matters of foreign policy and found restricting travel to Cuba in order to prevent the flow of “hard currency” into Cuba was an adequate means to achieve that goal.<sup>136</sup>

## VII. TRAVEL RESTRICTIONS TO CUBA AFTER JUNE 30, 2004

### A. *Generally*

On October 10, 2003, President George W. Bush “announced the establishment of The Commission for Assistance to a Free Cuba (“the Commission”).”<sup>137</sup> The Commission’s primary function is to assist Cuba in the transition from a communist country to a free and democratic society.<sup>138</sup> The Commission provided a report to the President on May 1, 2004, proposing a number of changes to the current United States policy towards Cuba.<sup>139</sup> Following the Commission’s suggestions, the President implemented the new policy considerations, effective June 30, 2004.<sup>140</sup> Since the outset of his presidency, President Bush has vigorously upheld restrictions on Cuba, while preserving the rights of Cuban citizens.<sup>141</sup> In a speech given on Cuba’s Independence Day, President Bush stated:

[T]he sanctions the United States enforces against the Castro regime are not just a policy tool, but a moral statement. It is wrong to prop up a regime that routinely stifles all the freedoms that make us human. The United States stands opposed to such tyr-

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132. *Id.* at 223, 232.

133. *Id.* at 235.

134. *Id.* at 238.

135. *Id.* at 258.

136. *Wald*, 486 U.S. at 243.

137. Cuban Assets Control Regulations, 69 Fed. Reg. 33,768 (June 16, 2004) (to be codified at 31 C.F.R. pt. 515).

138. *Id.*

139. *Id.*

140. *Id.*

141. *Id.*

anny and will oppose any attempt to weaken sanctions against the Castro regime until it respects the basic human rights of its citizens, frees political prisoners, holds democratic free elections, and allows free speech.<sup>142</sup>

### B. *Fully Hosted Travelers*

The new rules eliminate the “fully hosted travel[er]” provision, and licenses will no longer be extended under this provision.<sup>143</sup> Unfortunately, from the time of the provision’s original inception in 1999, travelers who claimed their travel was “fully hosted” took advantage of the program by engaging in prohibited monetary transactions in Cuba.<sup>144</sup> For example, these transactions included payments to Cuban authorities for docking fees in and out of Cuba.<sup>145</sup> Further, Americans in Cuba were receiving complimentary goods and services as a way to circumvent the law.<sup>146</sup> By eliminating this provision, OFAC is ensuring that Americans are not dealing in property in which Cubans or Cuban nationals might have an interest.<sup>147</sup> The amended rule now states that property received in Cuba, regardless of who it comes from and whether it is provided free of charge, is unauthorized unless it comes under a specific OFAC license.<sup>148</sup>

### C. *Mode of Travel and Returning Goods to the United States*

Changes have not only been made to define who can travel to Cuba and when a person may do so, but changes have also been made to the mode of travel.<sup>149</sup> Payment for air travel to Cuba via a carrier from a third country involving property in which Cuba has an interest, is now prohibited since the carrier is likely to pass on a portion of the payment to a Cuban entity.<sup>150</sup> Purchasing merchandise and returning it to the United States is now prohibited, regardless of value or how it came into the possession of the traveler.<sup>151</sup>

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142. *Bush Announces Strengthening of Measures Dealing with Cuba*, International Information Programs, July 13, 2001, available at <http://usinfo.state.gov/regional/ar/us-cuba/bush13.htm> (last visited Jan. 8, 2005).

143. Cuban Assets Control Regulations, 69 Fed. Reg. 33,768 (June 16, 2004) (to be codified at 31 C.F.R. pt. 515).

144. *Id.*

145. *Id.*

146. *Id.*

147. *Id.*

148. Cuban Assets Control Regulations, 69 Fed. Reg. at 33,771.

149. *Id.*

150. *Id.*

151. *Id.* at 33,769.



However, the exception for informational materials remains unchanged, and licensed travelers are welcome to bring back an unlimited amount of such material.<sup>152</sup> Additionally, regulations which governed the carrying of currency to Cuba have been repealed since it is now forbidden to spend American dollars in Cuba.<sup>153</sup> In its place is a new regulation restricting the amount of luggage that may be taken pursuant to licensed travel.<sup>154</sup> More specifically, the total amount of luggage Americans may take with them may not exceed forty-four pounds.<sup>155</sup>

#### D. *Visiting Family*

The rules regulating who may visit and how often a person may be visited in Cuba have also been amended and made stricter.<sup>156</sup> The definition of "close relative" has been modified and now only includes a "member of the person's immediate family."<sup>157</sup> "Immediate family" consists of the traveler's spouse, child, grandchild, parent, grandparent or sibling.<sup>158</sup> Additionally, provisions which previously allowed members of the traveler's household to visit have been modified.<sup>159</sup> Now, the traveler's co-habitants are only allowed to accompany the traveler if they too are related to the person being visited in Cuba.<sup>160</sup> Additionally, the provision providing that a person may visit a relative once every twelve months for an unlimited time period has been eliminated.<sup>161</sup> Now, the traveler can only visit family once every three years and for no longer than fourteen days at a time.<sup>162</sup> The three year period in which they may return will be calculated from the day they arrived in the United States.<sup>163</sup> For everyone else, the day of departure from the United States on their last trip to Cuba will serve as the basis for calculation.<sup>164</sup> Additional visits on request to OFAC before the three year waiting period has lapsed also will not be allowed.<sup>165</sup>

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152. *Id.* at 33,771.

153. Cuban Assets Control Regulations, 69 Fed. Reg. at 33,769.

154. *Id.* at 33,771.

155. *Id.*

156. *Id.* at 33,769.

157. *Id.*

158. Cuban Assets Control Regulations, 69 Fed. Reg. at 33,772.

159. *Id.*

160. *Id.*

161. *Id.*

162. *Id.*

163. Cuban Assets Control Regulations, 69 Fed. Reg. at 33,769.

164. *Id.*

165. *Id.*

### E. *Visiting Non-Cuban Nationals*

Regulations dealing with visits to family members who are not Cuban nationals, but are instead in Cuba for different reasons, such as an American studying in Cuba, have also been modified.<sup>166</sup> In order to visit a non-Cuban national in Cuba, "exigent circumstances" must exist.<sup>167</sup> The individual in Cuba will now have to demonstrate the exigency of the situation to the United States Interests Section in Havana in order to secure a license from OFAC.<sup>168</sup> For example, a license may be issued if the individual in Cuba is severely ill combined with an inability to travel.<sup>169</sup>

While in Cuba, Americans may now only spend a total of fifty dollars per day and an additional fifty dollars per trip to pay for transportation expenses.<sup>170</sup> For example, a traveler who is on a seven day trip may spend an additional fifty dollars on bus or train fare to travel from city A to city B, if the travel requires transportation between the two cities.<sup>171</sup> However, the additional fifty dollars may only be spent on transportation costs.<sup>172</sup>

### F. *Educational Activities*

The regulations concerning American students in Cuba have also changed.<sup>173</sup> For example, institutional licenses are now only valid for one year instead of two.<sup>174</sup> Additionally, students who travel to Cuba under a learning institution's license must be enrolled for credit at that specific institution's undergraduate or graduate program.<sup>175</sup> Students will no longer be able to travel under the educational licenses of institutions other than their own, even if the licensed institution program offers them credit towards their degree at their own institution.<sup>176</sup> Furthermore, employees of the licensed institution must now be full-time employees in order to travel to Cuba.<sup>177</sup> Part-time staff and contractors no longer qualify for travel under an institu-

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166. *Id.* at 33,772.

167. *Id.* at 33,769.

168. Cuban Assets Control Regulations, 69 Fed. Reg. at 33,769.

169. *Id.*

170. *Id.*

171. *Id.*

172. *Id.*

173. Cuban Assets Control Regulations, 69 Fed. Reg. at 33,772.

174. *Id.*

175. *Id.*

176. *Id.*

177. *Id.*

tion's license.<sup>178</sup> Also, certain educational activities must last a minimum of ten weeks.<sup>179</sup> Activities which must adhere to this requirement are "structured educational program[s] ... as part of a course offered at a licensed institution;"<sup>180</sup> "formal course[s] of study at a Cuban academic institution;"<sup>181</sup> and "[t]eaching at a Cuban academic institution."<sup>182</sup>

### G. *Remittances*

Regulations regarding quarterly remittances which were allowed to any household of a national in Cuba have been amended.<sup>183</sup> Now, quarterly remittances can only be sent to members of the sender's "immediate family."<sup>184</sup> "Immediate family" member is defined to include only a "spouse, child, grandchild, parent, grandparent, . . . as well as any spouse [or] widow," of the aforementioned.<sup>185</sup> Additionally, a specific notation has been included to indicate that these remittances are excluded if they are for the benefit of governmental officials or members of the "Cuban Communist Party."<sup>186</sup> Banks and other depository institutions are now required to receive a specific license from OFAC before engaging in forwarding services.<sup>187</sup>

## VIII. ENFORCING REGULATIONS

### A. *Generally*

The Department of State has already warned that "Cuban-Americans who have been visiting relatives in Cuba" are no longer able to rely on poor enforcement of restrictions by United States officials.<sup>188</sup> Since the President's initiative to strengthen enforcement over Cuba on October 10, 2003, OFAC has significantly increased enforcement of travel restrictions to

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178. Cuban Assets Control Regulations, 69 Fed. Reg. at 33,772.

179. *Id.*

180. *Id.*

181. *Id.*

182. *Id.*

183. Cuban Assets Control Regulations, 69 Fed. Reg. at 33,773.

184. *Id.*

185. *Id.*

186. *Id.*

187. *Id.*

188. *Cuba Travel Restrictions to be Enforced*, WASH. TIMES (UPI), June 7, 2004, available at <http://washingtontimes.com/upi-breaking/20040607-100419-5455r.htm>.

Cuba.<sup>189</sup> In a speech to a group of Cuban-Americans in Miami, Florida, Treasury Secretary John Snow stated: “[w]e’re cracking down. We mean business.”<sup>190</sup> OFAC has increased inspections of travelers and shipments to and from Cuba and is specifically targeting Americans who attempt to circumvent the law by traveling through third countries on private vessels.<sup>191</sup> With the assistance of the Department of Homeland Security (“DHS”), OFAC has already implemented specific programs and increased staff at the three airports where the most activity to and from Cuba takes place: Miami International Airport, New York’s John F. Kennedy Airport, and Los Angeles International Airport.<sup>192</sup> DHS plans to use “intelligence and investigative resources” in order to identify individuals who are traveling via third countries to circumvent the travel restrictions.<sup>193</sup> From October 10, 2003 to February 9, 2004, the OFAC has posted staggering numbers proving how serious it is about enforcing travel restrictions.<sup>194</sup> In that four month period,

**569** aircraft with passengers destined for Cuba, mostly direct charter flights, were targeted for outbound inspection. Over **44,000** passengers were screened as they departed the United States for Cuba and over **50,915** passengers were screened on their return to the United States on charter flights.

**275** travelers were denied travel on charter flights after examination revealed they did not qualify under any OFAC license category.

**1007** aircraft with passengers returning to the United States from Cuba were targeted for inbound inspections. This number includes returning charter flights and other flights arriving in the United States from third countries. Over **50,915** passengers and crew were subjected to extensive examination.

**376** OFAC-related seizures were accomplished, most of which related to the unlicensed importation of Cuban cigars and alcohol.

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189. Press Release, Office of Public Affairs, Office of Foreign Assets Control Status Report on Implementation of Enhanced Cuba Travel Enforcement (Feb. 9, 2004), at <http://www.ustreas.gov/press/releases/js1161.htm> [hereinafter Press Release].

190. Tom Carter, *U.S. Bans Cuba-linked Firms; Crackdown on 10 Foreign Companies*, WASH. TIMES, Feb. 10, 2004, at A15 (internal quotations omitted).

191. Press Release, *supra* note 189.

192. *Id.*

193. International Informational Programs, *supra* note 11.

194. See Press Release, *supra* note 189.

- **264** cases have been opened to date by OFAC's Enforcement Division for investigation of alleged post October 10, 2003 travel to Cuba
- **3** cases have been referred for criminal investigation by OFAC Enforcement directly to federal law enforcement agencies, primarily the Bureau of Immigration and Customs Enforcement. OFAC is working with special agents and Assistant U.S. Attorneys on a number of potential criminal cases.<sup>195</sup>

## B. *Uritsky v. Newcomb*

Readiness to enforce the President's initiative in further restricting travel to Cuba is exemplified in the threshold case *Uritsky v. Newcomb*.<sup>196</sup> In *Uritsky*, Mr. Uritsky departed from Montreal, Canada aboard a Cuban national airliner for a one-week vacation in Cuba.<sup>197</sup> "[H]e re-entered the United States through Highgate Springs, Vermont carrying a bottle of rum purchased in Cuba, and was questioned by U.S. Customs officials."<sup>198</sup> Uritsky admitted that he did not travel to Cuba under a valid OFAC license and stated that he paid a Canadian travel agency \$822.81 for the trip using his credit card.<sup>199</sup>

More than one year later, OFAC sent a pre-penalty notice to Uritsky, notifying him that the director of OFAC had reason to believe that Uritsky engaged in "unlicensed travel-related transactions by vacationing in Cuba and that OFAC intended to impose a ... fine ... of \$7,510."<sup>200</sup> The fine included \$7,500 for the unlicensed travel and ten dollars for importing the bottle of rum.<sup>201</sup> On March 28, 2003, Uritsky filed suit seeking review of the final agency action imposing the monetary fine.<sup>202</sup> Uritsky's defense was that he qualified as a "fully-hosted traveler."<sup>203</sup> Uritsky claimed that his father, a Russian citizen, paid for all of Uritsky's travel-related transactions to Cuba and provided an affidavit in support thereof.<sup>204</sup> Since Uritsky's father

195. *Id.*

196. No. CIV.A.03-10569-PBS, 2004 WL 1125203, at \*1 (D. Mass. May 19, 2004).

197. *Id.* This case was decided just one month before the notice was published in the Federal Register stating that travel restrictions to Cuba will become stricter and enforcement of these regulations will become a top priority. *Id.*

198. *Id.*

199. *Id.*

200. *Uritsky*, 2004 WL 1125203, at \*1.

201. *Id.*

202. *Id.* at \*2.

203. *Id.*

204. *Id.*

was not under the jurisdiction of the United States, this could have made Uritsky's travel lawful.<sup>205</sup>

Upon investigation by OFAC, it was learned that Uritsky himself had actually paid for the trip and that his father had later refunded him the money.<sup>206</sup> The District Court upheld OFAC's decision and found that because Uritsky charged the cost on his credit card, these actions constituted payment by him for the travel expense to Cuba.<sup>207</sup> Even if Uritsky's father refunded him the money, the transaction was still paid for by Uritsky and did not qualify as a "fully-hosted travel," regardless of "after-the-fact reimbursement."<sup>208</sup>

#### IX. THE IMPORTANCE OF CONTINUING RESTRICTIONS ON TRAVEL TO CUBA

The embargo against Cuba has been in place for more than forty years, and now, more than ever, the United States must continue its enforcement. One of the primary reasons travel restrictions have become stricter is to further curtail the entry of American dollars into the Cuban economy under Castro. It now appears that the Castro regime is out of money mostly due to the collapse of the Soviet Union, which resulted in the end of generous funding to the communist government.<sup>209</sup> Moreover, Cuba currently owes Russia over twenty billion dollars.<sup>210</sup>

What the United States is asking of Cuba in order to allow travel and lift the embargo as a whole is extremely feasible and can be achieved through pressure from the United States and other countries.<sup>211</sup> These prerequisites include liberating all political prisoners, allowing other political parties to form, and allowing free democratic elections.<sup>212</sup> These are the same types of conditions that influenced democratic change over the last four decades in Portugal, Chile, and the Dominican Republic—just to name a few.<sup>213</sup> In con-

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205. *Uritsky*, 2004 WL 1125203, at \*2.

206. *See id.*

207. *Id.* at \*3–\*4.

208. *Id.* at \*3.

209. *See* Maya Bell, *Bridging the Gulf; Younger Cuban-Americans Challenge Hard-Liners' Approach, Reach Out to Island*, ORLANDO SENTINEL, June 13, 2004, at A1, 2004 WL 82425353.

210. *Cuban GDP Grew 3 PCT in 2001, Recovery Slows*, REUTERS NEWS SERV. (Havana), July 6, 2002, <http://www.futurodecuba.org/notic-02-7-602eng.htm> [hereinafter GDP].

211. *See* Lincoln Diaz-Balart, *Cuba is not China*, USA TODAY, June 6, 2000, at 14A, LEXIS, News Library, USA Today File.

212. *Id.*

213. 145 CONG. REC. H2351, H2352 (1999).

trast, where there has been no external pressure and trade has been allowed, there has been no change to communist regimes.<sup>214</sup>

In upholding restrictions, the United States will also be taking a step toward preserving human rights. In Cuba, individuals are incarcerated for expressing their thoughts on a regular basis.<sup>215</sup> The Castro government does not disclose figures relating to how many individuals are currently in jail as political prisoners,<sup>216</sup> but the figure is estimated to be between 2000 and 5000 prisoners.<sup>217</sup> The political prisoners can be left in jail anywhere from a couple of days to over thirty years.<sup>218</sup> Since the judicial system is controlled by the communist party and the right to legal representation is not guaranteed, political prisoners are commonly detained for years without being charged or much less tried.<sup>219</sup>

Political prisoners are generally treated the worst of all prisoners.<sup>220</sup> They have unsanitary facilities, are not provided with blankets, and are afforded no legal protection.<sup>221</sup> Additionally, medical care is refused to political prisoners on a regular basis.<sup>222</sup> For example, Jorge Antunez, a thirty-three year old male, was incarcerated for eighteen years as a political prisoner.<sup>223</sup> While in jail, Antunez was beaten unconscious by prison guards.<sup>224</sup> When his sister questioned the beating, she was told that prison officials were authorized to beat inmates at their discretion.<sup>225</sup> At the time of the beating, Antunez was suffering kidney failure and hypoglycemia, and was denied medication.<sup>226</sup> Another example of a human rights violation was the Cuban government's attack on a tugboat carrying more than forty people (twenty were children) during which all of the passengers were killed for attempting to flee the island.<sup>227</sup>

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214. Diaz-Balart, *supra* note 211. An example of such a regime is China. *Id.*

215. 145 CONG. REC. H2351, 2352 (1999).

216. See Wm. Garth Snider, *Banishment: The History of Its Use and a Proposal for Its Abolition Under the First Amendment*, 24 NEW ENG. J. ON CRIM. & CIV. CONFINEMENT 455, 501 n.241 (1998). Political prisoners are individuals incarcerated simply for expressing any kind of disagreement for anything the government has done or might do in the future. *Id.*

217. 145 CONG. REC. H2351, H2353 (1999).

218. *Id.* at H2352.

219. *Id.*

220. *Id.* at H2353.

221. *Id.*

222. 145 CONG. REC. H2351, H2353 (1999).

223. *Id.*

224. *Id.*

225. *Id.*

226. *Id.*

227. 145 CONG. REC. H2351, H2352 (1999).

Recently, individuals opposing the restrictions on Cuba have compared such restrictions to the situation in China where private investment is being made; thus the question arises, why China and not Cuba?<sup>228</sup> The answer is simple; the situation in Cuba is completely different from that in China. Although it appears that investing in China is helping create a flourishing democracy, in reality it is not.<sup>229</sup> For example, the Chinese government is still trying to control all activity in its country.<sup>230</sup> Currently, the Chinese government has placed stringent controls on the use of the internet and has declared that “party cells” will be imposed on all private organizations doing business in China.<sup>231</sup>

Additionally, unlike China, Cuba has not taken any steps towards reform.<sup>232</sup> For example, in Cuba there is neither private property, nor any persons available to do business with except for the government itself. Clearly, this policy is attributable to Castro’s control over all aspects of life in Cuba.<sup>233</sup> Under Castro’s government, it is illegal for anyone to do business except for the government.<sup>234</sup> This means that even if the United States allowed businesses to establish themselves in Cuba, the business owners would not be able to independently run the business or hire employees.<sup>235</sup> The Cuban government would control the company and assign the workers they feel should be employed by the company.<sup>236</sup> For example, the largest foreign investor in Cuba is Sheritt International of Canada (“Sheritt”).<sup>237</sup> Sheritt operates a mine in Cuba that employs about 1500 individuals and pays Castro about \$10,000 a year per worker.<sup>238</sup> Castro, in turn, pays the workers eight-

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228. Jesse Helms, *On Trade, Cuba is not China*, N.Y. TIMES, June 24, 2000, at A15, LEXIS, News Library, NY Times File [hereinafter Helms].

229. *Id.*

230. *Id.*

231. *Id.* Party cells refer to individuals assigned by the government to oversee the private company’s affairs to make sure that they are operating to the liking of the communist government. *Id.*

232. Helms, *supra* note 226.

233. *Id.*

234. *Id.*

235. *Id.*

236. *Id.*

237. Susan Candiotti, *Chretien Shakes Hands with Castro: Canadian Leader Begins Whirlwind Cuban Visit*, CNN.com, Apr. 26, 1998, at <http://www.cnn.com/WORLD/americas/9804/26/cuba.chretien.update> [hereinafter Candiotti]. Sheritt executives are forbidden from traveling to the United States under the Helms Burton Act, 22 U.S.C. § 6021–081 (1994), because the company uses a mine that was taken from an American company by Fidel Castro when he took power. *Id.*

238. Helms, *supra* note 226.



een dollars a month and retains the difference for himself.<sup>239</sup> This is the type of money that the United States needs to prevent the Cuban government from acquiring. One way of accomplishing this goal is through the embargo and, more specifically, through travel restrictions that prevent the flow of American dollars into Cuba.

Looking back, the past forty-four years of the embargo have cost the Castro government more than seventy-two billion dollars.<sup>240</sup> However, it is estimated that one billion dollars annually is contributed to communist Cuba via travel to the island or Americans sending money to their family members.<sup>241</sup> This constant influx of American dollars is what currently drives the Cuban government and consequentially, is precisely what must stop.

## X. CONCLUSION

Castro continues to restrict access to food, education, health care, and work.<sup>242</sup> “This permits Castro to stifle any and all dissent. Any Cuban daring to say the wrong thing, by Castro's standards, loses his or her job. Anyone refusing to spy on a neighbor is denied a university education. Anyone daring to organize an opposition group goes to jail.”<sup>243</sup> The American government is trying to prevent these exact actions by restricting travel to Cuba and by not allowing American dollars to further help fuel the fire of the communist government. Travel restrictions are by no means going to shut down Castro's government, but it will significantly contribute to the overall effort and is more than a step in the right direction.

If the United States preserves the current sanctions against Cuba, it will be more difficult for Castro's successors to mimic the same form of government.<sup>244</sup> Because of lack of money, his successors will have no choice but to comply with United States' mandate, thereby, freeing political prisoners, allowing opposing political activity, permitting free press, encouraging the formation of labor unions, and most importantly, permitting democratic elections.<sup>245</sup> If the United States backs out now, oppression and a communist dictatorship for the Cuban people will be effervescent in decades to come even after Fidel Castro is long gone.<sup>246</sup>

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239. *Id.*

240. *Argentina Determined to Have Cuba in Mercosur*, CUBANET, Nov. 5, 2003, at <http://www.cubanet.org/CNews/y03/nov03/05e4.htm> (last visited Jan. 8, 2005).

241. *Id.*

242. *See Helms, supra* note 226.

243. *Id.*

244. Diaz-Balart, *supra* note 211.

245. *Id.*

246. *Id.*