

January 2003

Cubans Without Borders: Finding Home

Yvonne A. Tamayo

Follow this and additional works at: <https://scholarship.law.ufl.edu/flr>



Part of the [Law Commons](#)

Recommended Citation

Yvonne A. Tamayo, *Cubans Without Borders: Finding Home*, 55 Fla. L. Rev. 215 (2003).

Available at: <https://scholarship.law.ufl.edu/flr/vol55/iss1/8>

This Article is brought to you for free and open access by UF Law Scholarship Repository. It has been accepted for inclusion in Florida Law Review by an authorized editor of UF Law Scholarship Repository. For more information, please contact kaleita@law.ufl.edu.

CUBANS WITHOUT BORDERS: FINDING HOME

“Everybody gets to go home but Cubans”¹

*Yvonne A. Tamayo**

Recently, I returned to my birthplace of Cuba.² During spring break of 2001, I, along with twenty-nine of our law school’s faculty, alumni, and friends, attended a seven-day educational program in Havana entitled “Cuba for Law Professionals.”³ Because we were permitted entry to Cuba pursuant to a U.S. Treasury Department license requiring that the program contain a strong educational component,⁴ we obtained the cooperation of the National Union of Cuban Jurists (Union), Cuba’s loose equivalent of the American Bar Association. The Union is allegedly a non-governmental organization comprised of Cuban law professors, lawyers, judges, researchers, and consultants that conduct conferences and symposia to further the development of the legal profession.⁵

1. Mireya Navarro, *A Return to Cuba, A Search for Himself*, N.Y. TIMES, Oct. 21, 2001, § 2, at 6 (quoting Eduardo Machado, author of the play *Havana Is Waiting*).

* Associate Professor, Willamette University College of Law; J.D., Loyola University School of Law; B.S., Louisiana State University. I dedicate this Essay to my father, Ignacio J. Tamayo, for his unwavering support in my journey to finding home. I wish to thank Abbey Vanderbeek and Carmencita More for their review of prior drafts of this Essay. Financial support for this research was provided by Willamette University College of Law.

2. See generally Yvonne A. Tamayo, *Doing Good While Doing Well in the Twenty-First Century: One Cuban’s Perspective*, 70 FORDHAM L. REV. 1913 (2002).

3. Professor Michael Wise and I, along with the Willamette University College of Law Alumni Director, conceptualized and developed this program.

4. License No. CU-65453, issued by the Office of Foreign Assets Control, Department of the Treasury, stated, in pertinent part:

SECTION 2—CONDITION: *a) It is a condition of this license that activities in Cuba fully conform to the educational exchange activities as set forth in your application.*

SECTION 3—RECORDKEEPING REQUIREMENT: *The licensed organization is required to keep a list of individuals whose travel was authorized under this license. Such records shall be made available for examination upon demand for at least 5 years from the date of each transaction.*

SECTION 4—WARNING: *a) This license only authorizes travel-related transactions in connection with full-time educational exchange activities in Cuba and does not authorize transactions related to commercial or touristic activities*

Id.

5. We were given a promotional pamphlet entitled “National Union of Cuban Jurists: Non-Governmental Organization with Consultative Status in the United Nations,” which stated:

At 10:15 p.m. on March 17, 2001, Taca Airlines flight #8529 smoothly touched down at Jose Marti International Airport in Havana. I stepped from the plane onto the metal gangplank and inhaled deeply. The warm, humid air felt familiar, as if I had been away only a short time. Yet, I had not been on Cuban soil since my family's hurried exit from Havana on April 26, 1960. On that day, my parents, my two brothers, and I left behind our extended family, our home, our *patria*.

The first morning in Havana, our group received a detailed outline of the classes that we would attend. The Union would present, over the course of four days, seven three-hour lectures on the Cuban legal system.⁶ The presentations were held at the Union headquarters, a nondescript white 1950s stucco building located in Miramar, a residential area of Havana. Probably a former residence, its first floor contained a small interior courtyard where we took a ten minute break halfway through each lecture. The breaks were accompanied by welcomed offerings of thick, black *café cubano* in thimble-sized paper cups and little golden rectangular cakes topped with a clear, sweet syrup.

Each day we heard lectures on the Cuban judicial system, penal law, family law, and Cuba-U.S. relations. I listened with rapt attention as our hosts delivered long and winding discourses *desbordandose*⁷ with unrelentingly rigid thinking and stale ideology. Questions from our group often sparked circuitous answers containing preordained rhetoric unresponsive to the inquiry, and almost always ending with a redundant reminder that Castro's Cubans enjoy a high literacy rate and widely accessible medical care.

The National Union of Cuban Jurists (UNJC) is a non-profit and self-financed non-governmental organization of Law professionals with its own juridical personality and a scientific-professional profile An important role in the UNJC's professional activity is played by its Scientific Societies, nationwide associations created with the common purpose of contributing to develop the Legal Sciences and practice Law [sic], as well as the professional qualification of their membership, requested by and granted to those jurists who maintain a salient professional performance and meet the admission requirements.

NATIONAL UNION OF CUBAN JURISTS, NATIONAL UNION OF CUBAN JURISTS: NON-GOVERNMENTAL ORGANIZATION WITH CONSULTATIVE STATUS IN THE UNITED NATIONS (on file with author).

6. The lectures were entitled: 1) Introduction to Cuban History and Geography; 2) The Cuban Legal System: Constitution, Election System; 3) The Cuban Constitution; 4) The Cuban Legal System: Penal Legislation and Procedure; 5) Cuban Law Studies; 6) Helms-Burton: Background; and 7) Cuba-U.S. Relations.

7. *Desbordandose* is derived from the Spanish word *desbordamiento*, which means "1. Inundation. 2. Overflowing." MARIANO VELÁZQUEZ DE LA CADENA ET AL., NEW REVISED VELÁZQUEZ SPANISH AND ENGLISH DICTIONARY 239 (1966).

I noted that not one of the speakers brought any written notes to aid in their presentations. I wondered why, and then concluded that decades of repetition, without change or innovation, adhered their respective discourses to memory, rendering written notes superfluous. I also observed that for emphasis, Union members often shook their right hand index fingers in an up-and-down motion, a gesture for which Fidel Castro is widely known.

By the third day, my internal response to the lectures was consistent: I vacillated between incredulousness at the message, contempt for the messengers, and pity for the human beings. In their well-worn clothes and dusty shoes, the Cuban jurists resembled old, tired puppets defending a failed social experiment. It was clear that Castro's repressive authority has created an insular population that seems stuck, frozen in time, living an enigmatic existence akin to a forty-three year quarantine from the rest of the world.

Unlike the presentations' rehearsed rhetoric, lunchtime afforded me a chance for one-on-one *repartee* with our Cuban hosts. Each day at noon, our tour bus transported us to a different Cuban restaurant, but the offerings varied only slightly: chicken or pork cooked with a lemony *mojo criollo*,⁸ white rice, a salad of sliced tomatoes, shredded cabbage and sometimes, a wedge of lime. Dessert usually consisted of a scoop of vanilla ice cream, followed by Cuban coffee.

During my chats with the Union panelists, talk of family subtly but persistently entered our conversations. When I asked about her life on the island, the sole woman in the group quickly responded that "*la vida aquí no es fácil, pero por lo menos tengo cerca a mi hijo y nieto.*"⁹ Another Union member explained, in broken English, that although Cuba's "situation" is not good, he remains to care for his eighty-five-year-old mother: "*You don't uproot old trees,*" he whispered intently.

Walking through the streets of Havana, displays of familial bonds were abundant. On Sunday morning, a teenage girl and her boyfriend, plus her parents, strolled together towards *la catedral*, arms all interlocked. A young man drove an ancient Packard onto *el malecón* boulevard. Next to him snugly sat a young girl and *Mami*, while the back seat remained empty. On a street corner, a middle-aged man repeatedly kissed his mother on her left cheek before boarding an overcrowded public bus.

While in Havana, I attempted to visit my family's residence, where I lived until age five. A woman answered my knock on the front door. She seemed to be of middle-age and had a pleasant face. Nervously, I greeted her with "*hola.*" I quickly explained that the house had been my family's

8. *Mojo criollo* is a mixture of garlic, bitter orange, lemon, and pepper used to marinate meats in Cuban dishes.

9. "Life here is not easy, but at least my son and grandson are near me."

home until 1960 when we left Cuba, and asked if I could view the inside of it. “*Por favor,*” I continued, “*quisiera poder contarle a mi padre en Miami que visité nuestra casa en Cuba.*”¹⁰ She smiled, hesitatingly, and without a word slowly but deliberately closed the door.¹¹ I was flooded with sadness. Nonetheless, I smiled at the irony of the situation—I had finally returned home, but I was not welcome there, not even as a visitor.

On the day of the final lecture, the Union jurists staged a *fiestesita*¹² for us. They served cubes of yellow cheese and green olives on small white styrofoam plates and drinks of rum and cola. An aging boom box played a feisty Cuban *salsa*, and soon some of our group members began dancing to the music. Looking around, I spotted one of the jurists standing alone, apart from the festivities. During that day’s lecture, he had quietly sat at the panelists’ table, looking bored, perhaps even angry. Inexplicably, I now felt drawn to this seemingly inhospitable man. I approached him and in Spanish, I introduced myself. He looked at me intently, then asked if I was Cuban. I answered yes, and explained that since our departure in 1960, none of my family had returned to the island. The following exchange ensued:

¿Te costó trabajo poder venir a Cuba?

Vine bajo permiso de grupo educacional, pero me costó un poco mas trabajo conseguir mi visa. Porque soy nacida en Cuba, tuve que presentar cinco fotos personales, aunque al resto del grupo le pidieron solamente dos. También tuve que presentar un documento contestando varias preguntas sobre mi familia y las circunstancias de nuestra salida de Cuba.

¿Donde vivía tu familia?

En el Vedado.

¿Visitaste tu casa?

Traté de visitarla, pero la señora que vive ahí no me dejó entrar.

¿Que irónico verdad? Durante tantos años no pudiste regresar a tu patria- por fin lo logras, y aun no puedes entrar en tu casa. ¿Piensas volver a Cuba?

10. “Please, I would like to tell my father in Miami about my visit to our home in Cuba.”

11. Our tour guide explained that Castro has frightened much of the Cuban population by “warning” them against an alleged plot by the U.S. government and exiled Cubans to reclaim the exiles’ homes and evict the present occupants.

12. “Little party.”

Sí, me gustaría regresar.

Te doy un consejo- no te limites en poder imaginar que un día podrás volver a tu patria, a tu casa, facilmente y sin problemas.

*Espero que tengas razón.*¹³

My conversation with the angry jurist was surprising and insightful. At first, we had been strangers with seemingly irremediable differences. Yet, despite the ideological polarities between us, our personal exchange had engendered mutual good will.

Our week in Havana passed quickly. Too soon it was time to leave. On our last day in Cuba, we traveled to the countryside. The arching palm trees, rolling green hills, and lush foliage welcomed me. Among the verdant scene, I noticed aging billboards proclaiming *Patria o Muerte*¹⁴—they repelled me. Then, as a huge orange sun set in a spectacular purple and pink

13.

Was it difficult for you to gain entry into Cuba?

I traveled under an educational permit, but it was a bit more difficult obtaining my visa. Because I was born in Cuba, I had to submit five personal photographs, while the rest of the group members were only asked for two. Also, I had to submit a document providing answers to questions about my family and the circumstances surrounding our exit from Cuba.

Where did your family live?

In the *Vedado* neighborhood.

Did you visit your home?

I attempted to visit, but the woman who lives there did not let me enter.

Isn't that ironic? For many years, you cannot return to your homeland—finally, you are able to travel here, and still you cannot enter your home. Do you plan to return to Cuba?

Yes, I'd like to return.

I'll give you some advice—don't limit yourself in your ability to imagine that one day you will return to your homeland, to your home, easily and without problems.

I hope you're right.

14. "Homeland or Death" is a slogan of Castro's revolution.

sky, and the bus headed to the airport, our tour guide nodded towards the horizon, and smiled. Softly, she said “Goodbye, Havana.”

On the return flight, my thoughts drifted to Elian Gonzalez, the young boy who roused the long-entrenched discordance between exiled and island Cubans. Elian’s story is by now familiar: a risky pre-dawn escape from the island on a flimsy boat; the sudden, violent death of Elian’s mother, Elizabeth Brotons, leaving her son alone; and, finally, Elian’s heroic rescue, bringing him to freedom in the United States. I remembered the Cuban community’s response to the prospect of Elian’s return to Cuba. It was a deeply emotional, extraordinarily vocal, and highly public expression of anger, sadness, and despair. Repeatedly, I had been struck by the sharp tone and brazen, uncompromising words employed by some Miami Cubans. On one occasion, Elian’s uncle Lazaro Gonzalez stood outside his home surrounded by a Cuban crowd shouting “War! War! War!”, and defiantly stated that “(t)hey will have to take this child from me by force[!]”¹⁵ The intransigence resonated not only in Gonzalez’ strident vow to keep Elian, but also in Miami-Dade Mayor Alex Penelas’ announcement that local law enforcement officers would not aid a federal attempt at forcefully retrieving Elian from Lazaro’s home.¹⁶

Gonzalez and Penelas’ provocative declarations reflected the sentiments of many Cuban exiles, some of whom held around-the-clock vigils outside of Gonzalez’ home.¹⁷ The events that followed Elian’s rescue, replete with mass protests and violence leading to the arrest of approximately three hundred and fifty Cubans, exposed some Miami Cubans as unreasonable, unyielding, even hysterical.¹⁸

15. *Elian’s Relatives Lose in Battle of the Videos*, S.F. CHRON., Apr. 14, 2000, at A28.

16. *Castro’s Promise: Elian’s Dad, Family Will Come to U.S.*, NEWSDAY, Mar. 30, 2000, at A03.

17. Miami Cubans’ opinions on Elian’s fate were overwhelmingly uniform. Ninety-one percent of Cubans polled in South Florida thought that Elian should remain in the United States. Oscar Corral, *Miami Tangled in Memories*, NEWSDAY, Apr. 15, 2000, at A22. Conversely, eighty-four percent of the non-Cuban community opined that Elian should return to Cuba. *See id.*

18. Sue Anne Pressley, *In Little Havana, Mourning Subdued Crowd Shows Up at House Where Elian Lived*, WASH. POST, June 2, 2000, at A20. One political group, the “Cuban Force,” publicly urged Cubans to withdraw their money from U.S. banks in protest of adverse court rulings in the Elian case. *Id.*

One newspaper described the Cuban community’s behavior during Elian’s stay in Miami as follows:

[T]he policy grip of the fanatical anti-Castro lobby, led by the Cuban American National Foundation which financed and often dictated the strategy, movements and statements of Elian’s Miami relatives, as it has done over the years for so many elected officials and policy makers, is now at its weakest.

Having . . . turned Elian into the human symbol of its vitriol against Castro’s Cuba . . . the hard-line exile community has utterly exposed itself in front of the

I also recalled the morning of Saturday, April 21, 2000, when I first saw video clips of the FBI's pre-dawn raid on Lazaro Gonzalez' home. I stood transfixed, as the television screamed with eerie footage of a terrified Elian being whisked from Gonzalez' little white house into a van filled with hooded men armed with machine guns. The swift, sudden, and violent extraction of Elian from Little Havana marked the culmination of his tumultuous five month stay in the U.S.

Elian's arrival and subsequent departure from the United States unearthed many Cuban exiles' deep feelings of loss. Regarding the Miami exile community's longstanding sentiments, one author has written:

The exile's grief for the Cuba that had been lost was an all but inescapable part of the ambient noise of Cuban Miami. For all its glittering appurtenances, its prosperity, and, at times, its self-satisfaction, there was a level on which no pleasure, no level of attainment, nor any material accumulation could make up for what had been taken away from these exiles by the triumph of Fidel Castro.¹⁹

Elian exposed the wounds of Castro's revolution. Specifically, he disinterred memories of the forced disformation of Cuban families.

One example of Cubans' desperate response to Castro's coercion of Cuban families was the covert "Operation Pedro Pan." In 1961, a rumor spread throughout the island that Castro was planning to deport school-age children to the Soviet Union for communist indoctrination. As a result, desperate parents who were denied exit visas placed their young children, alone, on commercial flights from Havana to Miami. In total, 14,048 children were separated from their parents in a frantic exodus to escape the threat of Fidel Castro's regime.²⁰ The Cuban children were dispersed to foster homes, or remained in orphanages while they waited months, or

United States and international community.

In a supreme effort to use Elian to isolate Castro, the Cuban-American hard-liners have successfully isolated themselves.

....

The strident politics of the Elian case have weakened the Cuban-American grip on U.S. policy

Clinton's Chance on Cuban Policy, BALT. SUN, Apr. 30, 2000, at 1C.

Arguably, the death of Jorge Mas Canosa, the founder of the powerful political group "Cuban American National Foundation" precipitated a division among the Cuban ranks in Miami that was magnified during the Elian controversy, and that damaged the group's public image. David Adams, *Cuban Exile Group Loses Host*, ST. PETERSBURG TIMES, July 21, 2001, at 2A.

19. DAVID RIEFF, *THE EXILE: CUBA IN THE HEART OF MIAMI* 64 (1993).

20. See generally YVONNE M. CONDE, *OPERATION PEDRO PAN: THE UNTOLD EXODUS OF 14,048 CUBAN CHILDREN* (1999).

years, for their parents to join them in the United States.²¹ Unlike the Pedro Pan children, however, the reformation of Elian's family would occur not in this country, but in Cuba.

On my visit to Cuba, I experienced, first-hand, the polarization between Cubans within and Cubans outside the island. In spite of their differences, however, I discovered keen similarities between the two groups. Cubans on both sides of the Florida Straits are strikingly similar in their fierce family loyalties. The uninhibited displays of love and loyalty that I witnessed by Cubans towards their families abundantly resonated with my own experiences among my own, and other, exiled Cuban families.

Regarding those who create and influence policy in Cuba and the United States, Professor Frank Valdes has observed the existing parallels:

The "Havana elites" encompass primarily the circles of power that control the two overlapping institutions that authoritatively and forcefully supervise all life within Cuba: the government and the party, including those . . . officials with the power to conduct economic and political relations with the world external to the island. The "Miami elites" encompass a loose assemblage of [businessmen] . . . and politicians . . . who have amassed [wealth] or position in this country, and who use their . . . influence strategically and methodically to promote their . . . struggle against the . . . economic and political monopoly of Havana's elites. Both elites cloak themselves in nationalistic fervor, and invoke it to mobilize their foot soldiers.²²

On the island, Cubans live in insularity and isolation from the rest of the world. This is largely a result of Castro's repressive dictatorship, which deprives Cubans access to news from independent sources, generally bans travel outside Cuba, and closely monitors the speech and actions of every Cuban.²³ Recently, Castro allowed *Granma*, the official state-run Cuban newspaper, to publish President Jimmy Carter's speech to a Cuban audience during his visit to the island. Despite the public criticism by President Carter of Cuba's one-party Communist government for denying basic human freedoms to Cubans, Castro nonetheless allowed the

21. Anne Rochell, *In the Dawn of Castro's Cuba*, ATLANTA J.-CONST., Feb. 21, 1993, at A1.

22. Francisco Valdes, *Diaspora and Deadlock, Miami and Havana: Coming to Terms with Dreams and Dogmas*, 55 FLA. L. REV. 283, 288-89 (2003) (footnotes omitted).

23. Cuba's only newspaper, the government-run *Granma*, was described by Argentinean editor Jacobo Timerman as "a degradation of the act of reading." Christopher Hitchens, *Havana Can Wait*, VANITY FAIR, Mar. 1, 2000, at 101. One Cuban succinctly expressed the dearth of independent news in Cuba by remarking that "if you listen to the radio you don't need the newspaper." *Id.* at 110.

unprecedented media coverage.²⁴ This unusual gesture, however, was followed by a sharp reminder of Castro's ongoing tyranny over Cubans' lives on the island. In June 2002, Castro called on the National Assembly to amend Cuba's constitution and pronounce socialism as "untouchable."²⁵ Not surprisingly, the referendum passed by a unanimous vote.²⁶

During the past four decades, the United States has reinforced the isolationist posture of much of the Cuban exile community by refusing to ease restrictions on commercial, educational, and cultural exchanges between the two countries. In fact, the U.S. embargo has succeeded in effectively depriving Cubans of U.S.-exported basic necessities like soap, medicine, and clothing.²⁷ This harsh measure has fueled an already acrimonious relationship, and has further decreased the likelihood of reconciliation between the two countries.

My response to the four-decade-old standoff between Castro and the exiles is *ya basta*.²⁸ Polarization must cede to allow movement towards

24. In his speech at the University of Havana, President Jimmy Carter stated that "Cuba has adopted a socialist government where one political party dominates, and people are not permitted to organize any opposition movements. [Your constitution recognizes freedom of speech and association, but] other laws deny these freedoms to those who disagree with the government." David Gonzalez, *In Address to Cuban Nation, Carter Urges Reform*, N.Y. TIMES, May 15, 2002, at 1A.

25. Cristobal Herrera, *Cuban Lawmakers: Keep Socialism*, MIAMI HERALD, June 26, 2002, at 3A.

26. *Id.*

27. In 1996, Congress passed the Cuban Liberty and Democratic Solidarity Act. Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996, Pub. L. No. 104-114, 110 Stat. 785 (codified as amended in scattered sections of 22 U.S.C.). Commonly referred to as the Helms-Burton Act, the law codified existing federal regulations, and reaffirmed the U.S. embargo against Cuba under the Trading With the Enemy Act of 1917 and the Cuban Democracy Act of 1992.

The Helms-Burton Act defines "embargo" as including "all restrictions on trade or transactions with, and travel to or from, Cuba, and all restrictions on transactions in property in which Cuba or nationals of Cuba have an interest." *Id.* § 4(7)(A) (emphasis added).

In summary, the Act provides as follows:

- (1) It prohibits loans, credits, or financing by U.S. citizens or residents for transactions involving nationalized property in Cuba;
- (2) It sets out a program whereby the U.S. will remove the trade embargo and provide economic assistance to Cuba when the President determines that Cuba has a transitional or democratically-elected government;
- (3) U.S. citizens are allowed to sue in the U.S. federal court system anybody who traffics in U.S. property nationalized by Cuba; Helms-Burton extends this right to persons who were not U.S. citizens at the time of the expropriation; and
- (4) It blocks entry to the U.S. by foreign citizens involved in trafficking with confiscated property.

Id. §§ 103(a), 104(a), 202(a)(1), 302-304.

28. "Enough, already."

reconciliation. This, in turn, necessitates *desbordamiento*, a dis-bordering, or crossing over the ideological and physical restraints on the Cuban communities inside and outside of Cuba.

In Miami, the exiles' public release of deeply-felt, long-held emotions of anger and sorrow in response to Elian's rescue and subsequent return to Cuba is a harbinger of *desbordamiento*. Post-Elian, a number of powerful members of the Cuban community have displayed subtle signs of an increasingly conciliatory tone.²⁹ For the island Cubans, *desbordamiento* is a more difficult process, as Castro's absolute authority over nearly every aspect of their lives thwarts individual or independent movement towards that end. It is clear, however, that as they struggle for survival amongst barren stores, decrepit buildings, and ubiquitous food lines, island Cubans would benefit in large measure by the dissolution of the borders containing and restraining them. Perhaps, Castro's demise will provide opportunities for reconciliation.

During my trip to Cuba, I experienced ideological contradictions and conflicting emotions. For the first time, I was compelled to examine my entrenched feelings about the island and its people. As a result, I know that I will not find home simply by visiting my family's former residence. I also know that during the unguarded lunchtime conversations with the jurists, and my subsequent exchange with the angry jurist, we transcended our polarities. In mirroring our similarities and mutual goodwill, those fleeting but unforgettable exchanges brought me closer to finding home.

29. The Miami Herald recently reported that "South Florida is witnessing the ascendancy of a new Cuban-American leadership intent on improving the community's image and nurturing better relations with its non-Cuban neighbors." Robert L. Steinback, *CANF Rift May Open New Doors*, MIAMI HERALD, July 29, 2001, at 1B. Joe Garcia, Executive Director of the Cuban American National Foundation, told the newspaper that "[t]he 'we're right and everyone else be damned' attitude was fine during the Cold War, but it [became a problem] when our policy perspectives no longer had the comprehension of the nation." *Id.*

In fact, CANF's new thirty-eight-year-old leader, Jorge Mas Santos, wants to elevate the exile community's profile by adopting a political strategy that is representative of the twenty-first century. Jorge Mas Santos, *Two Worlds, Two Cultures*, MIAMI HERALD, July 29, 2001, at 1A.