ARE CUBANS UNJUSTLY FAavored RELATIVE TO NON-CUBANS IMMIGRANTS?—AN UNDERSTANDING OF THE COMMUNIST REALITY IN CUBA AND THE LEGITIMACY OF THE CUBAN ADJUSTMENT ACT

Leslie Perez Perez

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I. INTRODUCTION

We believe the people of Cuba should be free from tyranny. We believe the future of Cuba is a future of freedom. It's in our nation's interest that Cuba be free. It's in the neighborhood's interest that Cuba be free. More importantly, it's in the interest of the Cuban people that they be free from tyranny.1

The United States, as John F. Kennedy famously named it, is "a nation of immigrants,"2 and has always followed a policy of international justice, and a duty to all the oppressed in the world.3 This article argues that legitimate reasons remain for the United States to directly oppose Cuba's regime and continue granting special immigration privileges until "Cuba [is] free from Communist domination."4 Only then, "the Cuban people [will] again be able to enjoy the benefits of freedom, [by] living in a

1. I was born and raised in Cuba becoming a licensed attorney in 2011 at the age of 22. Conscious of the Government’s manipulation of the legal representation in the island and the complete disregard to Constitutional law and human rights, I decided to leave. I crossed the Mexican border on May 15, 2011, where I was able to request a parole and subsequently to obtain a legal status in the United States only because of the existence of the Cuban Adjustment Act. I am now a Juris Doctor Candidate for the fall of 2015 at Nova Southeastern University, which would have never been possible without the invaluable contributions of my dear friend Lisbet Velaquez, Esq. and mi familia.
country which is, once more, a member of the free world family of nations.\textsuperscript{5}

As a Cuban immigrant, it is my duty to give others, not born or raised in the island, a fresh perspective of the Cuban reality. In 1959, a major political change in Cuba negated its citizens their political voice and caused a detrimental effect on their capital resources.\textsuperscript{6} Such change consisted of the implementation of a communist system, later known as the Castro’s regime.\textsuperscript{7} As a way to provide humanitarian help to the Cuban people facing such an oppressive regime, the United States Congress through its plenary authority to establish and enforce immigration policy\textsuperscript{8} enacted the Cuban Refugee Adjustment Act (CAA) in 1966.\textsuperscript{9} The CAA provides special provisions conferring legal status for Cuban refugees and serves as an escape toward freedom and justice for the Cuban people.

Immigration laws for Cubans are very different than immigration laws for people arriving from other nations.\textsuperscript{10} This paper does not intend to promote immigration inequality or unfair policy towards non-Cuban immigrants, instead it offers a different perspective of the CAA’s legitimacy and relevant United States asylum provisions applicable to Cubans. Although the CAA may be applicable to other countries, this will paper will only discuss its applicability to Cuban immigrants. This paper explores the notion that Cubans leave their country not only due to economic difficulties, but also in fear of unjust persecution and to protect their lives and fundamental liberties. Every nation should oppose a government that chooses dictatorship over democracy.

This paper will begin giving a general overview of the CAA. The first section will address the congressional intent of the Act and its subsequent impact on the Cuban society. The second section will discuss some of the viewpoints against the CAA arguing that the Act unjustly benefits Cubans. Lastly, the third section will argue how the abrogation of the CAA will only aid Castro’s government in oppressing its people’s religion, culture, and political ideologies.

\textsuperscript{5} Id.

\textsuperscript{6} Sandy Alvarez, Cuba: Migration and Demography, 3 ENCYC. OF RACE, ETHNICITY, AND SOCIETY 315 (Richard T. Schaefer ed., 2008).

\textsuperscript{7} Id.

\textsuperscript{8} U.S. CONST. art. I, § 8, cl. 4.

\textsuperscript{9} H.R. REP. NO. 89-1978, at 3792.


\textsuperscript{12} Id. at 905.


Diplomatic relations between the United States and Cuba were severed in 1961, and commercial transportation from Cuba was suspended in 1962. Since then, small boats and rafts used by refugees escaping from the island, continue to arrive in South Florida. Cuban rafters are also known as “balseros.” Comes from author’s personal experience.


\textsuperscript{15} See CARMEN MESA-LAGO, CUBA’S RAFT EXODUS OF 1994: CAUSES, SETTLEMENT, EFFECTS, AND FUTURE 15 (North-South Center, University of Miami 1995).
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5. Id.
7. Id.
8. 8 U.S.C. app. art. 1, § 8, cl. 4

II. EVENTS LEADING TO THE ENACTMENT OF THE CUBAN ADJUSTMENT ACT

Prior to the enactment of the CAA, the United States faced not only military threats, but also the possibility of a nuclear war, political chaos, and a massive migration of refugees.11 America, nonetheless, was cognizant of the critical situation of the Cuban people and took action by implementing the CAA.12 Thus, the enactment of the CAA supports that the United States does not seek to unjustly promote illegal Cuban immigration.

In 1994, the Cuban government stopped trying to prevent its citizens from leaving the island and ordered the maritime forces to stay put whenever they saw Cubans leaving, which was done in a number of occasions using hijacked vessels.13 Later that year, former Cuban president Fidel Castro officially announced that the Cuban government would no longer stop the population from emigrating by boat.14 This determination sought to allow anybody to leave the island in violation of Cuban maritime laws and their current practices, which made their legal exit practically impossible. As a result of Castro’s announcement, United States President Bill Clinton on August 11, 1994 openly refused to admit all Cubans intercepted at sea and ordered them to return to Cuba.15 Due to political relations, these Cuban nationals were not allowed to return to the island, and instead were sent to the American naval base in Guantanamo Bay,

12. Id. at 905.
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Cuba. All those that were able to get to United States territory were nonetheless granted political asylum.

The 1994 political decisions on both sides were indeed a crisis for both countries, which ended with the signing of a Joint Communiqué between Cuba and the United States on September 9, 1994. In the Communiqué, the United States consented to:

1. prohibit those Cubans who had been rescued at sea from entering the United States; (2) terminate the granting of parole visas to Cubans who had entered into the United States illegally; (3) collaborate with the Cuban government to avoid human trafficking; and (4) allow for the issuance of more than 20,000 immigrant visas per year through the Interest Section in Havana.

On the other side, the Cuban government, was willing to:

1. restrain dangerous ways frequently used by its citizens to leave the island and use eloquent methods in the alternative; (2) work with the United States at arm length to prevent human trafficking and illegal migration to the United States; (3) provide for the safe return of Cubans who came into the United States or its safe haven on or after August 19, 1994 and (4) keep collaborating and negotiating with the United States in an effort to address the issue of repatriation of illegal Cubans.

Notwithstanding the Joint Communiqué, some organizations were not pleased with the policies established and challenged the policy of denying Cubans in Guantánamo Bay the right to apply for asylum. One of these organizations was the Cuban American Bar Association (CABA) who expressed its disagreement on the renowned case Cuban American Bar Association, Inc. v. Christopher. The Haitian Refugee Center also participated in the efforts to stop the deportation of Haitian immigrants also

held in Guantánamo Bay. In Christopher, the District Court for the Southern District of Florida granted a temporary restraining order to halt the deportation of Cuban nationals and immediately followed it with an appeal in the Eleventh Circuit. The question raised on appeal was whether the denial of the right to apply for political asylum from Cubans and Haitians in Guantánamo Bay violated the standing provision of the Immigration and Nationality Act (INA). The Eleventh Circuit, relying on Sale v. Haitian Centers Council, set the standard to address questions arising from the extraterritorial application of the INA. The Eleventh Circuit held that the United States would not afford Cubans and Haitians in Guantánamo Bay an opportunity to apply for asylum because Guantánamo Bay is not American land per se even though it is located within the governmental power of the United States. In addition, the court also addressed the argument advanced by CABA that giving the Cubans in Guantanamo Bay the right to request parole and asylum would further the purpose of the CAA against the Cuban government. Declining to accept this argument the court reasoned that:

[while these acts acknowledge the political climate in Cuba, provide for economic sanctions for dealing with Cuba, and allow for certain rights for Cubans who reach the United States, they do not address the rights of Cuban migrants to enter or to seek entry to the United States initially, nor do they confer directly any rights upon the Cuban migrants outside the United States.]

Despite many contentions of non-Cuban immigrants, the CAA was designed to support a safe and legal migration from Cuba to the United States. President Clinton’s decision to return all Cubans that the United States Coast Guard had intercepted at sea is yet another proof that the United States does not seek to promote illegal immigration that potentially endangers the lives of Cuban citizens trying desperately to leave their

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23. Id. at 1420–21.
24. Id. at 1421.
25. Id. at 1417; see also 8 U.S.C. § 1231(b)(3)(A) (2006) (“[T]he Attorney General may not remove an alien to a country if the Attorney General decides that the alien’s life or freedom would be threatened in that country because of the alien’s race, religion, nationality, membership in a particular social group, or political opinion.”).
27. Id.
28. Christopher, 43 F.3d at 1426.
29. Id.
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homeland. The American people sought instead to help those in need to escape a tyrannical government in a legal, organized, and legitimate fashion.

In explaining the rationale for the new policy to Cuban-Americans, President Clinton declared:

We simply cannot admit all Cubans who seek to come here . . . . We cannot let people risk their lives on open seas in unseaworthy rafts . . . . [R]egularizing Cuban migration also helps our efforts to promote a peaceful transition to democracy on the island . . . . For too long, Castro has used the threat of uncontrolled migration to distract us from this fundamental objective. With the steps we’ve taken, we will be able to devote ourselves fully to our real long-term goals.30

Most countries that implement an asylum-supportive and humanitarian policy rely on the 1951 United Nations Convention Relating to the Status of Refugees, subsequently widened by the 1967 Protocol.31 More than 130 states are parties to the convention and they recognize these policies as pillars of any international refugee policy.32

One of the most important terms produced by the convention was the “refugee” definition. Once the United States implemented the Refugee Act, which in essence set the standards for political asylum under American territory, it applied the definition of refugee contained in the United Nations 1951 convention.33 For some reason, there is no other area within immigration laws that has driven more debate among different immigrant cultures and that has provoked more emotional fervor than political asylum.

The United Nations Convention Relating to the Status of Refugees defines the term refugee as:

(A) any person who is outside any country of such person’s nationality or, in the case of a person having no nationality, is outside any country in which such person last habitually resided, and who is unable or unwilling to return to, and is unable or unwilling to avail himself or herself of the protection of, that country because of persecution or a well-founded fear of

Oppressed societies craving for freedom normally base their decisions to leave their patria on the fear of persecution by their government due to their conflicting political views. This has led to countless legal proceedings and millions of discussions over the interpretation of what exactly does it mean to provide asylum to those who seek it.35

Petitions for political asylum in a deportation or exclusion proceedings are reviewed either by an Immigration and Naturalization Services (INS) officer or by an immigration judge in the Justice Department’s Executive Office for Immigration Review (EOIR).36 In the course of these proceedings, the petitioner enjoys the right to be represented by counsel and present evidence and witnesses to support its case.37 The Board of Immigration Appeals (BIA) makes the final determination in appeals and these determinations are reviewable by the federal courts.38 Since the adoption of the Refugee Act, federal courts have been very active in addressing both constitutional and non-constitutional challenges to the way the federal government treats those individuals seeking refugee status based on political asylum claims.39

32. Id.
37. § 1229(a)(4)(A)-(B).
38. 8 C.F.R. § 1003(b)(1), (3), (9).
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32. Id.
III. CUBAN ADJUSTMENT ACT: LEGISLATIVE INTENT

The CAA, in its fifty-four-year anniversary, has been challenged on various grounds, most of which have to do with the unequal treatment it offers to other immigrants from other nations compared to the way it treats Cuban immigrants. Contestants allege that the Act is too unrestricted, that it reflects mainly objects of the Cold War and that all immigrants should have an equal treatment under the laws. That is not really the case because the CAA is not dealing with two similarly situated groups. On the contrary, this is an issue of what groups are indeed persecuted and harassed by the government of their home country. Such persecution then, must be based on a well-founded fear of being targeted because of race, religion, nationality, particular social group or political opinion. This distinction sets apart the Cuban situation from that of other nations. The persecution of the Cuban people by their government is commonly based on the individual’s political opinion when it contradicts that upheld by the Cuban government.

The power of Congress allowing for the enactment of the CAA emanates directly from the Constitution. The United States Constitution gives Congress the exclusive authority to create, implement, and enforce laws governing United States immigration policy. In Edye v. Robertson, the Supreme Court ruled that the Commerce Clause in Article 3 of the United States Constitution granted Congress the power to control immigration matters allowing it “[t]o regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes.” In Chace Chan Ping v. United States, the Supreme Court subsequently outlined the scope of such power holding that the legislative authority to exclude immigrants from the United States is inherent in the country’s sovereignty and therefore, this power is subject to few or almost no constitutional limitation. Throughout the years, the Supreme Court has been reluctant to intrude with the broad discretion conferred to Congress under this broad power to legislate about immigration matters, and to limit the way refugees are to be admitted or excluded from the United States. The CAA is then interpreted as the answer by the United States to the persisting problem of

Cuban immigration and the issues caused by immigration into the country since 1959. The CAA was originally created as a managing technique to deal with the massive Cuban migration in the 1960s. Prior to 1966, the vast majority of incoming Cubans came into the United States as exiles in a temporary basis to shake Castro’s regime off-balance and then return home. Nonetheless, since the Castro’s government refused to change its tyranny-form of government, those Cubans who came temporarily decided to extend their stay until something changed, and so, what was once temporary started to become more permanent. Once within the United States, the process of obtaining an immigrant visa became a nearly impossible task. Cubans seeking permanent United States residency, like all other nationals, were required to leave the United States and apply for an immigration visa at a United States consulate. Only after obtaining the immigrant visa could a Cuban return to the United States as a permanent resident, able to legally work and enroll in school.

Congress found this process unjust because it created a “great personal hardship to, and impose[d] financial burdens upon, people who are already impoverished by force or circumstances.” It was very difficult and financially burdensome for a Cuban individual, who had left the island with nothing of value, to leave the United States to a third country that would allow them to stay and file for permanent residency. The thing is that when Cubans tried to legally leave the Island, the Cuban government, enraged by the conduct of its citizens, took their most valuable belongings and did not allow them to take neither money nor valuables out of Cuban territory. In an effort to hasten the resettlement of the ever increasing, unemployed Cuban population, Congress drafted the CAA.

41. Id. at 167 (citing Geoffrey R. Stone et al., CONSTITUTIONAL LAW (4th ed. 2001)).
43. Note, supra note 11, at 905.
44. Id.
45. Id.
46. Id.
50. Id. at n. 20.
51. Id. at 709.
52. Id. at 710.
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Under the CAA, Cubans are allowed to apply for permanent resident status after being present in the United States for at least one year. Originally, Cubans, natives or naturalized, were only able to apply for adjustment under this Act if they were inspected and admitted, or paroled. However, natives and citizens of Cuba who are present in the United States without having been inspected and admitted are "eligible to apply for an initial parole at the USCIS [United States Citizenship and Immigration Services] field office having jurisdiction over the applicant's place of residence." Under the Act, there is a reversion provision under which the date of admission is the later date between the thirty months before the filing of the application or the date of the applicant's entrance to the United States.

The immigration privileges offered to Cubans extend particularly to the individual's spouse and children irrespective of their citizenship status so long as they reside with the Cuban applicant in the United States. The Eleventh Circuit has held that the rollback provision applies to non-Cuban spouses of Cuban nationals even when they marry a Cuban spouse who adjusted status prior to the marriage. Nevertheless, the Administrative Appeals Office (AAO) has ruled that once a Cuban alien becomes a United States citizen, he or she loses the alien label under the CAA and cannot confer CAA benefits to a non-Cuban spouse. Similarly, the AAO has determined that once a Cuban citizen or native becomes a lawful permanent resident of the United States instead of a nonimmigrant or parolee, the benefits enjoyed under the CAA can no longer be extended on to the individual's spouse.

It is important to note that being a member of the Cuban Communist Party or any other communist affiliation is a potential ground for denial of these CAA benefits under the so-called Totalitarian Party-Related

64. Id. at 2.
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55. Id.
56. NATIONAL LAWYERS GUILD, IMMIGRATION LAW & FAMILY § 4:27 (West 2015). Note that the term “parole” is used in different contexts. The term is discussed in more detail in § 5:23 where in order to meet the “parole” requirement for CAA eligibility, an alien must be granted parole under INA § 212(d)(5)(A) & U.S.C.A. § 1182(d)(5)(A)). See 1 IMMIGRATION LAW AND DEFENSE § 5:23 (West 2015).
57. Id.
58. See Gonzales v. McNary, 980 F.2d 1418, 1421 (11th Cir. 1993) (denying the citizenship status of non-Cuban spouse and child where Cuban died before INS decided petition).
59. NATIONAL LAWYERS GUILD, supra note 56.
60. Id.
61. Id.

Inadmissibility Provisions. However, if the petitioner’s membership was involuntary, the law provides exceptions due to the regime’s commonly known practices of forcing its political views to their citizens and requiring them to become part of their political party against their will or have them face persecution.

Under the CAA, Cubans, unlike other non-Cubans, who are legally admitted to the United States have the possibility to obtain employment authorization documents almost immediately after being admitted. On the other hand, Cubans who are not admitted into the United States through parole have to wait a year in order to apply for a work permit together with their residency application. The CAA does not provide a filing date precluding subsequent application and judges do not have jurisdiction to make final determinations on an application under the CCA filed by a Cuban applicant, unless the individual is going through a deportation proceedings after having been previously admitted into the United States pursuant to the same process required for legal stay. Therefore, an immigration judge has jurisdiction to determine the legal status of an individual only after he has gone through the adjustment of status process under the CAA. This jurisdictional limitation imposed over immigration judges to make determination on an application for adjustment derives its authority from the implementation by the Attorney General of specific regulations effectuated back in 1997.

The CAA has been recently amended in 2005, by the Violence Against Women Reauthorization Act of 2005 (VAWA). Based on the language of the statute, Interpreter Releases previously reported that:

[s]pouses of Cubans who were eligible for relief under the CAA may petition for relief if they can demonstrate that they are filing within two years of the termination of the marriage and that

64. Id. at 2.
68. Id.
69. See Mary B. Clark, Falling Through the Cracks: The Impact of Vawa 2005’s Unfinished Business on Immigrant Victims of Domestic Violence. 7 U. Minn. L.J. RACE, RELIGION, GENDER & CLASS 37, 57 (2007).
abuse or extreme cruelty was the basis for the marriage termination.70

The Act was generally created to further two United States foreign policy goals in dealing with Castro. Those objectives were "(a) to destabilize Castro's government by draining it of vital human resources (such as physicians, teachers, and technicians); and (b) to discredit the regime through encouraging the flight of thousands from a 'Communist' to a 'free' country."71 The Act also sought to guarantee a safe haven for Cuban immigrants been forced out of their country due to the practices of their oppressive government, and in providing this, to make it as easy as possible for them to succeed with these efforts. The legislative history of the CAA documents this oppression and highlights Congress' intent to aid the persecuted peoples of Cuba.72

Providing a safe haven from Communist Cuba is not expressly stated in the legislative history of CCA, but well established by history. After the 1960s, the relations between the United States government and the Cuban government were disrupted by the Soviet Union and the Cold War. Once Castro made publicly known his tendencies and inclination towards a Marxist-Leninist path, right after the United States-supported invasion at the Bay of Pigs, such declarations were construed as a cry for support from the Communist nations. The United States' newly instituted policy to combat Communist expansion was to permit Cubans to come to democratic territory and denounce as well as oppose communist ideologies while weakening the island of its educated labor force.73 On the other hand, communist Cuba interpreted such departures as a declaration of enmity by its people and a vote of support for democracy.74

To make an educated conclusion as to whether there are valid and legitimate reasons to justify the CAA and its inconsistency among other immigration laws, an analysis of its legislative history is in order. Among the various reasons that made Congress establish the CAA, there are four predominant reasons:

73. Estevz, supra note 47, at 1279-80.
74. Id. at 1280.

1) to promote Cold War ideals by weakening a Communist dictatorship that threatened the American national security; 2) to maintain a safe haven in the United States with few procedural limitations as possible for Cuban refugees abandoning the island for politically related issues; 3) to allow Cuban refugees in the United States to remain in the country by applying for permanent residency; and 4) to create a faster approach for Cuban refugees to unite into the American workforce.75

The CAA is widely criticized as unfair and nonsensical. One may argue that these positions are based on misconceptions regarding the reasons supporting the United States' enactment of the CAA or due to a lack of understanding of the Cuban reality since 1959. Even prior to the enactment of the CAA, Congress had a well-recognized policy of allowing Cuban refugees to seek political asylum.76 The congressional rationale behind the CAA was stated by Secretary Ball in a written statement to the House Judiciary Committee in 1966: "[t]he granting of a permanent residence status to Cuban refugees would further demonstrate the desire of the United States to play a full and sympathetic role as a country of asylum for refugees from communism."77 Cuba remains a communist country.78

Communist ideals and politics diminished the Cuban economy and, with it, its possibilities of development, and to make matters worse, when Moscow severed its ties with the island after the collapse of the Soviet Union, Cuba underwent severe scarcity and sufferance. This has been explicitly illustrated by Mark Frank, a known journalist who resides in the island, in his book Cuban Revelations. In his book, Frank quotes the words of a nurse who tells him that:

The lights were off more than they were on, and so too was the water. . . Food was scarce and other consumer goods almost nonexistent. . . Doctors set broken bones without anesthesia. . . Worm dung was the only fertilizer. "Cubans used to make hamburgers out of grapefruit rinds and banana peels; we cleaned with lime and bitter orange and used the black powder in

75. Note, supra note 11, at 908.
76. HUGHES & ALUM, supra note 18, at 198.
77. Id.
78. Communism, BLACK'S LAW DICTIONARY (10th ed. 2014) ("Communism: a political doctrine based on Marxism, advocating the abolition of capitalism or private ownership in favor of common ownership").
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batteries for hair dye and makeup.” “It was a haunting time that still sends shivers down Cubans’ collective spines.”

As Congress stated, “there are many reasons which would justify the granting of an exemption to Cubans from the proscription against natives of other Western Hemisphere countries as to eligibility for adjustment of immigration status while in the United States,” and sadly the majority of these reasons are pervasive today. Although in the last few years, the Cuban government has implemented changes in its policies, primarily in immigration law, none of them give rise to or justify repealing the CAA. The subcommittee found it essential to make sure that there was no public misunderstanding as to the reasons behind the enactment of the CAA by clearly stating that it indicated a direct repudiation of Castro’s regime. It is not surprising that:

The government of Fidel Castro has demonstrated consistent disregard for internationally accepted standards of human rights and for democratic value. It restricts the Cuban people’s exercise of freedom of speech, press assembly, and other rights recognized by the Universal Declaration of Human Rights adopted by the General Assembly of the United Nations on December 10, 1948.

Thus, non-Cuban immigrants should understand that the United States directly opposed a communist system when it enacted the CAA and tried to provide humanitarian support to the Cuban people as reflected by the Cuban Democracy Act (CDA) in 1996. Violations of human rights are one of the three main reasons giving rise to mass migration to the United States, and the CDA specifies that the CAA will be revoked only when a democratic government exists in Cuba. Such a change has not occurred in Cuba, and it is very unlikely that such a dream for thousands of Cubans will materialize anytime soon.

86. Id.
87. See generally Banco Para el Comercio Exterior de Cuba v. First Nat. City Bank, 658 F.2d 913 (2d Cir. 1981);
89. Id., supra note 14, at 164.
91. See Bryan Caplan, Communism, THE CONCISE ENCYCLOPEDIA OF ECONOMICS (2008),
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government used to routinely deny exit visas to citizens who obtained the necessary immigration documents from the United States Interest Section in Havana. These laws were recently changed, and professionals were no longer required to await this long for the issuance of a white card, which was the official immigration document issued by the government as a permit to allow citizens to permanently leave the country. However, recently, the Cuban government re-introduced the waiting law but this time it decided to press tyranny only against doctors. This shows, once again, that the Cuban government does not intend to establish a democratic government where changes in the laws do not happen on a whim of rulers without notice to the Cuban people or by referendum of the population.

There have been many contentions by non-Cubans arguing that these changes justify a repudiation of the CAA. However, none of the reformations, which as continually demonstrated come and go according to whim, have changed the government’s political position or at least addressed any of the worldlessly censored violation of human rights. Furthermore, the new changes only address some of countless obstacles a Cuban has to overcome before he could even think of getting away from the dictatorship. For example, before being allowed to emigrate, the Cuban government requires that would-be Cuban émigrés purchase high-priced exit visa and complete exorbitantly high-priced medical exams. Cuban-imposed fees for exit visas, medical exams, passport costs, and airport taxes amount to the equivalent of $625, or approximately a three-year salary equivalent in the island. Due to the economic and political barriers imposed by the Cuban government, it is not surprising that hundreds of Cuban citizens resort unorthodox methods to exit the island looking for a better life.

Moreover, the Cuban government still regulates the exit and entry of professional athletes and security officials and reserves the right to deny anyone the issuance of a passport for any unjustified reason, which is always overshadowed with a recital of an undisclosed national security purpose. Although, so far it goes, the new migration law eliminates the need for white cards, except for doctors, the government requires for every Cuban national in foreign soil desiring to visit the island to issue a permit through any of its embassies. To better illustrate this point, this procedure parallels the process required of a foreign national to enter a country where he lacks citizenship. Cubans that permanently leave the island have to take this additional step of obtaining visas to return to their homeland and pay the associated fees to obtain entry some on which include a $400 entry fee.

Additionally, the motives of the Cuban government as to the immigration reforms are nothing, but yet, another way of exploiting the Cuban society. By making it easier for Cubans to travel, work abroad, and then return home, once their visa request is approved, Cuba’s new migration law is a way of increasing the economy at an estimated of $1 billion dollars per year. Unfortunately, the profits generated are not even used to foster economy to fulfill the needs of most Cubans living in the Island and instead they resort to the black market or receive assistance from family members abroad to obtain daily necessities.

“The Cuban government has denounced the 1966 [CAA] for decades as a murderous policy and has unilaterally blamed it for the migration of thousands of Cubans to Florida, ignoring the push factors that prompt them to leave their country.” Yet, Cuba’s reforms for a better country are frustratingly slow, inconsistent, and insufficient to address its citizens’ economic difficulties and desires for greater political participation. This lack of swiftness, however, should not be taken as a sign that the government has simply dug in its heels or is ignoring the political stakes at issue. The response of Cuban leaders to their country’s vexing long-term challenges has involved strategic thinking and considerable debate. Indeed, one might anticipate that the next few years will be crucial, but it is not wise to keep one’s hopes up regarding any changes that could represent political liberties in the island any time soon.

The 53-year-old Miguel Díaz-Canel, the current Vice-president and Castro’s selected successor, recently noted that Cuba has made “progress on the issues that are easiest to solve . . . but what is left are the more important choices that will be decisive in the development of [the] country.” Díaz-Canel definitely acknowledges that the previous restrictions were a simple showing of the government’s power and not a
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92. G.A. Res. 217 (II) A, Universal Declaration of Human Rights, Art. 13(2), (Dec. 10, 1948) (“Everyone has the right to leave any country, including his own, and to return to his country”).
93. Sweig & Bustamante, supra note 91, at 2.
95. Hughes & Alum, supra note 18, at 213.
96. Id.
97. Sawczyn, supra note 71, at 346.
98. Sweig & Bustamante, supra note 91, at 2.
99. Id. at 6.
100. Id.
102. Sweig & Bustamante, supra note 91, at 2.
policy based on economic or political strategy for the furtherance of the Cuban society.  

Cuba is divided into different classes even though the government refuses to accept it publicly. For example, not everyone has access to exchanges with foreign people; however, the government-connected elite enjoys unrestricted access to imported merchandises. Meanwhile, the rest of the population, experiences the shortage of basic goods such as soap and cooking oil. Castro’s regime prides itself of having a free health care system, but he forgets to mention the fact that is of very low quality, and patients with all mentioned needs still have to purchase "their own medicine, iodine, and even bed sheets, items that are usually available only on the black market." The Cuban government is indeed more repressive and unjust compared to other communist governments. The restriction even extends to the suppression of basic communications of a person to express their thoughts and to communicate it to others. Not so long ago, a journalist visiting the island had to lie to be able to enter Cuba otherwise he would have been evicted if they had known he was a journalist.  

Legislators are trying to scare the Cuban American community by saying that because Cubans are visiting their relatives on the island without any limitations the CAA is in peril. That is simply not true. Not a single bill amending or ending the CAA has passed a committee of any chamber of Congress in the last fifteen years, which goes to show that not a single change in the Castro’s policy would make the CAA being ripe for reform and as such amount to its abolition. Since 1978, when Cuban Americans began to visit their country of origin, hundreds of thousands have visited the island and neither party in Congress, Republican or Democrat, have tried to end the CAA, and no president wasted any time trying to do so. United States congressmen along with presidents have always understood the need for Cubans to visit their loved ones and to at least try to provide them with their basic needs. In fact, on May 20, 2002, President George W. Bush announced his initiative for a new Cuba to encourage freedom within Cuba, make life better for the Cuban people, and give the Cuban people greater control of their economic and political destiny.  

Among other steps, President Bush announced that the United States would ease restrictions on humanitarian assistance that directly serves the needs of the Cuban people and helps build Cuban civil society and would offer scholarships for Cuban professionals and students who are trying to build independent civil institutions in Cuba. President Bush’s initiative was yet another way to support the Cuban people and their clear political and humanitarian problems. The amendments undertaken expanded the statements of specific licensing policy regarding transactions that provide support for the Cuban people and transactions incident to Cuba-related humanitarian projects.  

Under Section 515.575, paragraph (a) of the initiative is enlarged to include as licensable those activities of independent organizations designed to promote a rapid, peaceful transition to democracy. Under Section 515.575, the list of licensable humanitarian activities is enlarged to include construction projects intended to benefit legitimately independent civil society groups as well as non-formal educational training within Cuba and elsewhere on topics including civic education, journalism, advocacy, and organization.  

The CAA has brought to this great nation an influx of mostly educated Cuban immigrants, who have relatives in the United States helping them to have a smooth landing in their newly adopted country, which benefited the United States. The majority of Cuban immigrants do not hold hostile feelings towards American society. On the contrary, they admire the supremacy of the laws and are grateful to be provided with such unbeatable freedom. Cubans respect and venerate American liberties and do not have antagonistic views against the liberal principles of American democracy.  

V. CONCLUSION  

International principles and customary practices dictate that countries have a responsibility to prevent the return of persons to territories where their lives and freedoms may be threatened. It is undeniable that Cuban refugees still flee the island mainly due to political reasons that are intrinsically tied to the poor economic situation they live in.
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103. Id.
105. Id.
106. Totten, supra note 79, at 1.
107. Lopez Levy, supra note 100.

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109. Id.
111. Id.
112. Note, supra note 11, at 910-11.
113. Lopez Levy, supra note 100.
114. Sartori, supra note 31, at 319.
115. Note, supra note 11, at 913.
Non-Cuban immigrants should take a step back and try to look at the CAA from an objective point of view if they want to understand what the Cuban people have to deal with and how the United States is the only government in the world that has consistently provided a genuine hope and escape for them. Castro has created an infrastructure designed to isolate all the people living in Cuba from the realities of the world by excluding them from basic communication forms such as unrestrained access to Internet, international television, and many others. Castro’s government since its beginning had and it continues to have a very “long-arm statute” as they claim themselves with jurisdiction over Cubans even after they become U.S. citizens.

“Special” is the term that other immigrants use to refer to the only way a Cuban national has to free himself of the Cuban oppression. If by special they refer to the opportunity of finding a shelter that protect Cubans from a cruel system that take retaliation for having a different political opinion, then special is the appropriate word to use. There are countless barriers that render the Cuban population unable to rise against their own government:

1) licensed professionals in Cuba are never able to have an income higher than $720 per year, which precludes any type of financial ability to fight the Cuban government; 2) the legal profession in Cuba can be called the buffoon of the Castro’s regime as they are subject to penalties if in any way attorneys try to obtain explanation of laws enacted that are unconstitutional on its face and the majority of judges make their sentencing decisions based on government’s sources not available to defense counsel and private discussions with prosecutors; 3) for more than twenty years the medical profession was, and continues to be, subject to in-island-arrest from five to seven years if they had received any type of United States government visa to move permanently to the States, which caused that many qualified and skilled young people decided to forgo any professional dream of practicing medicine in hopes that the government was not able to reach their dreams of freedom; 4) Castro’s government forces all Cubans that have received the American citizenship to continue paying for a Cuban passport that can only be used to enter the country and it is subject to prior approval. In another words, Cubans have to issue a visa to enter their own country and pay a fee to the government when they are planning to extend the visit for more than twenty-one days; 5) Cuba is indeed a society subject to government punishments of a crime they have not even committed yet, and just a simple expression in public that directly contradicts communism is considered enough evidence to stand the burden of proof at trial.

These are only a few reasons why the CAA is not even close to be outdated or unnecessary for the Cuban nation and it remains a legitimate reason to grant Cubans “special” immigration privileges. How are they going to sustain any type of realistic posture against the Castro regime? They simply cannot.

If a society is deprived of their most fundamental rights of life, liberty, and security, a law that is aimed to provide some relief to those affected should never be eliminated until such fundamental rights are reinstated. Thus, the reasons that made the United States government to openly oppose a system that crushes human rights persist until this day, and in fact there is no real showing or proof that the destruction of Castro’s regime is coming to an end anytime soon. Castro has made it clear that he intends to retain control and avoid significant economic or political reforms and Cuba remains under a repressive communist system.116

The United States has always encouraged other countries to contribute in the protection of dissidents and to uphold the declaration of human rights.117 The enactment of the CAA was a clear way of saying that they are “not waiting for the day of Cuban freedom, we are working for the day of freedom in Cuba.”118 Understanding why the elimination of the CAA will never translate into a coalition that could outs Castro and free the island from the regime, boils down to the understanding of the reality of Cuban society and what the existence of the Act represents to the Cuban people, libertad.

116. Merrill, supra note 14, at 167.
118. Id.
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These are only a few reasons why the CAA is not even close to be outdated or unnecessary for the Cuban nation and it remains a legitimate reason to grant Cubans “special” immigration privileges. How are they going to sustain any type of realistic posture against the Castro regime? They simply cannot.

If a society is deprived of their most fundamental rights of life, liberty, and security, a law that is aimed to provide some relief to those affected should never be eliminated until such fundamental rights are reinstated. Thus, the reasons that made the United States government to openly oppose a system that crushes human rights persist until this day, and in fact there is no real showing or proof that the destruction of Castro’s regime is coming to an end anytime soon. Castro has made it clear that he intends to retain control and avoid significant economic or political reforms and Cuba remains under a repressive communist system.16

The United States has always encouraged other countries to contribute in the protection of dissidents and to uphold the declaration of human rights.17 The enactment of the CAA was a clear way of saying that they are “not waiting for the day of Cuban freedom, we are working for the day of freedom in Cuba.”18 Understanding why the elimination of the CAA will never translate into a coalition that could outs Castro and free the island from the regime, boils down to the understanding of the reality of Cuban society and what the existence of the Act represents to the Cuban people, libertad.

118. Id.