



Advocacy for Human Rights in the Americas

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March 1, 2016

What steps should the Obama administration take on Cuba policy in its last year?

What the Obama administration has done to improve U.S.-Cuba relations is historic. The executive actions taken since the announcement that relations would be restored, paired with the President's forthcoming trip, have sent a message that the United States is serious about developing a 21st Century policy toward Cuba. This not only serves U.S. interests but those of the Cuban people.

The policy overall, as well as specific steps the administration has taken, such as opening embassies and expanding travel and commercial relations, have been widely popular with the American people. This includes support from many in the Cuban-American community and among Republicans. The changes have also clearly strengthened the United States' relationships throughout Latin America and set the country on a course to reap the benefits that improved relations with Cuba would bring. In his last year in office, the President has the political room to consolidate and build on these steps.

The administration should take measures that can bring new opportunities for our businesses, open new avenues for U.S. philanthropy, enhance U.S. leadership in Latin America, and bring mutual benefits to the American and Cuban people in the realms of security, the environment, and health.

While only Congress can lift the embargo, there are additional steps President Obama can take today that would pave a path to solidify existing policy changes and advance U.S. - Cuba relations. If made with enough time, these changes would allow U.S. NGOs, businesses, and philanthropic organizations to reach concrete agreements with Cuba this year, and encourage lawmakers, the business community, philanthropies and other constituencies who are preparing for deeper engagement with Cuba.

As the administration continues to take steps forward that are popular with the public, it can also engage with Congress, particularly those Members who are currently advancing legislation to end the embargo. This would draw attention to the cross-spectrum political support for the new Cuba policy and increase prospects for significant legislative action.

Below are some key steps that the administration should consider:

What specific steps could the President take to encourage progress for business, philanthropy and other constituencies seeking opportunities on the ground in Cuba?

- 1. Further modify Office of Foreign Asset Control (OFAC) and Department of Commerce regulations governing exports to Cuba, imports from Cuba, and**

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investments in Cuba that benefit the Cuban people. Regulatory changes will permit some U.S. businesses to come to agreements with Cuba this year, which will reinforce the interest of others in the business community.

OFAC and Commerce have taken important steps to reduce the regulatory burden. First, with the January 27th announcement of regulatory changes permitting case-by-case exports to Cuban state-owned firms when goods will benefit the Cuban people, and then with the February approval of a license allowing a U.S. firm to invest in a tractor production facility in Cuba that would benefit private farmers. The administration should build on these changes.

A logical next step would be to announce a policy of case-by-case approval for individuals or businesses to invest in joint ventures or other business arrangements with Cuban state-owned firms when the goods and services produced provide clear benefits to the Cuban people. This could apply in areas such as education, agricultural production, food processing, public transportation, public health, and infrastructure, as well as for Cuban private entrepreneurs and cooperatives.

Despite challenges on the Cuban side, many U.S. businesses are eager to gain a foothold in the Cuban market because of the long-term potential. But they continue to find the U.S. regulatory framework difficult to navigate. At the same time, because of the commercial possibilities and the investment opportunities, businesses from Europe, China, and Latin America are making inroads in Cuba, and U.S. businesses are missing opportunities. A number of high visibility business deals between U.S. companies and Cuba would generate important momentum. This would not only generate increased interest and confidence from other companies, but would make it difficult, politically and legally, for a different administration to sever business ties.

- 2. Provide a general license allowing U.S. philanthropic organizations to make program-related grants through both governmental and non-governmental organizations as well as individuals in Cuba.**

The general license for “donative remittances” should be clarified or expanded to permit foundation grant-making to public and private entities in Cuba. This could allow some grant-making to move forward this year and would broaden foundations’ interest and engagement for the future. U.S. philanthropic organizations have interests in supporting charitable, artistic and cultural, environmental, and social activities in Cuba. Because such activities are carried out on the island by both private and public organizations as well as individuals, private U.S. philanthropic organizations should be able to exercise their independent judgement about which entities are the most appropriate grant recipients. A general license permitting

grants to governmental and non-governmental organizations, along with individuals, would allow foundations to work with a broad range of actors implementing projects that benefit the Cuban people. In a similar vein, the general license that permits remittances for “humanitarian projects” should recognize that both governmental and non-governmental organizations carry out humanitarian activities and should permit public and private entities to receive remittances.

- 3. Modify regulations to permit both private and public cooperation on health care and medical issues. Both companies and medical researchers could move forward on agreements this year, moving closer to a climate that allows Americans to benefit from health research and medical advances in Cuba.**

Cuba has been a leader in many respects in the medical field and several Cuban innovations would greatly benefit U.S. citizens. Among many examples are a promising lung cancer vaccine that has been approved for lab research, but not for trials, in the United States, as well as a medication that has been shown to reduce the risk of amputation by over 70% for those with complex diabetic foot ulcers, but that is unavailable to U.S. patients. Cuba has also conducted extensive research on tropical diseases like dengue, and is now opening research on the Zika virus. Collaborative research projects on these and similar issues would benefit the United States.

Export Administration Regulations (EAR) and OFAC regulations could be revised to take several important steps. They could extend a general license allowing pharmaceutical companies to conduct clinical trials of Cuban-produced pharmaceutical products under FDA regulations and then market those products in the United States once they have received FDA approval. This latter point is important, as without the assurance that they will be able to market products that receive FDA approval, most companies will be unwilling to invest in clinical trials. A general license could also authorize joint ventures or other business arrangements between U.S. individuals and companies and Cuban enterprises involved in the development of vaccines and other innovative medical products, as well as allow U.S. medical researchers and research institutions, both public and private, to engage in cooperative projects with Cuban researchers. This would include bilateral cooperation in third countries on health issues.

- 4. Expand security cooperation agreements and processes. Security cooperation on drugs, law enforcement, migration, and other issues will benefit U.S. national interests while fostering greater commitment from U.S. agencies to maintain ongoing cooperation with Cuba.**

Given their geographic proximity, the United States and Cuba share many of the same security concerns, from drug trafficking, to migration, to transnational crime and fraud. Progress on these issues would not only be politically popular, but also improve security in the Caribbean, a region close to U.S. shores where increases in crime, migration and trafficking directly affect U.S. national security.

Over the last several years, government-to-government security cooperation has increased, particularly through the Coast Guard on case-by-case cooperation on fugitives and on some migrant smuggling issues. But there is much room for collaboration in areas such as counter-narcotics, cybersecurity, border security, migrant smuggling, counter-terrorism, and cooperation on fugitives. By increasing the breadth of security cooperation, President Obama would allow joint work on issues of mutual interest and build internal constituencies throughout U.S. agencies in support of continuing and expanded U.S.-Cuba security cooperation. Agencies might include the Coast Guard, Department of Justice, U.S. Marshals Service, Drug Enforcement Agency, and Federal Bureau of Investigations. This would be popular politically and help to build public and congressional support for engagement with Cuba.

- 5. Expand travel by extending the general license for people-to-people travel to include travel by individuals engaged in people-to-people activities. The flow of individual travelers would increase quickly. This would stimulate new interest in travel to Cuba, especially among the young, and would inject more capital into Cuba's private sector.**

As the law now stands, travelers are still required to go on pre-packaged group trips that are quite expensive and follow a strict itinerary. These restrictions not only violate U.S. citizens' freedom to travel, but most Americans are opposed to this restriction. According to the most recent Gallup poll, nearly 60% of Americans favor ending the travel ban on Cuba. To increase the number of Americans that may freely travel to Cuba, the President can issue a general license that allows individuals to conduct people-to-people travel on their own, requiring them to maintain records showing they engaged in a full-time program of people-to-people activities.

- 6. Facilitate and expand authorized travel and trade by taking vigorous action to solve the problems that continue to make most U.S. financial institutions reluctant to engage in authorized transactions with Cuba.**

In January of 2015, OFAC authorized the use of credit and debit cards in Cuba and authorized U.S. banks and financial institutions to enroll merchants and process authorized transactions. In September, OFAC clarified that most financial transactions that are ordinarily incident to licensed transactions, including the use of online payment platforms, are authorized. These were important and positive steps, designed to facilitate travel and authorized commercial exchanges. Nonetheless, most banks have not expanded credit and debit card services and many continue to be reluctant to process legal transactions, such as agricultural exports; they appear to have continuing concerns about legal exposure. While administration officials have done some outreach to the banking community, they need to consult with financial institutions and their legal departments about what obstacles continue to deter their involvement and how those obstacles might be overcome.

What steps could the President take to further improve U.S. relations in the Western Hemisphere and consolidate existing advances?

1. **President Obama should explicitly declare, in a speech or in remarks during his trip to Cuba that the Cold War is over and that regime change is not the goal of U.S. policy toward Cuba. This statement would be well-received, not only in Cuba, but in much of Latin America.**

In its announcement that President Obama would be traveling to Cuba, the White House made clear that it believes engagement with the Cuban government is the best way forward. However, the rhetoric of a “rapid transition to democracy” in Cuba remains in the Helms-Burton legislation, and Congress has continued to fund “democracy promotion programs” under that framework. This has left ambivalence about U.S. intentions toward Cuba. While the United States has criticisms of the human rights situation there and hopes to see progress, regime change is not U.S. policy or the government’s goal. It would be a great step forward in U.S.-Cuba relations for President Obama or Secretary Kerry to publicly state that the Cold War is no longer guiding the relationship between the two countries.

2. **The Treasury Secretary should make a statement of U.S. willingness to see Cuba re-engage with multilateral financial institutions.**

Over the next few years, as more capital flows into Cuba’s transitioning economy, the country’s financial outlook will drastically change. Its reintegration into financial institutions, such as the World Bank, the International Monetary Fund (IMF), and the Inter-American Development Bank (IDB), will smooth this transition, allowing for funds and support in bolstering key economic sectors on the island, such as tourism, agriculture, and infrastructure.

The United States should recognize the importance of Cuba's re-engagement with the IFIs and welcome dialogue between these institutions and the Cuban government through a statement by the Treasury Secretary. Although the Helms-Burton legislation appears to require that U.S. executive directors at multi-lateral institutions vote against Cuban membership, President Clinton, when he signed Helms-Burton issued a statement indicating that he construed the provision to be precatory rather than binding. He asserted that requiring the Executive Branch to oppose Cuban participation would intrude upon the Executive's authority to conduct foreign relations. Whether the Executive Branch is free to vote for Cuban membership or required by law to oppose it, no vote is imminent. The issue now is signaling support for dialogue between the IFIs and Cuba and sending a public message that assures the Cuban government and those looking to invest in key sectors that the United States is supportive of Cuban engagement with IFIs and is committed to long-term development and prosperity in the country.

3. **The administration should support Cuban re-engagement with the international economic system by eliminating U.S. barriers to Cuban commercial transactions with third countries. Change OFAC regulations to authorize Cuba's use of U.S. dollars in international transactions with third countries by adding a general license authorizing banks in the United States to clear dollar transactions between Cuba and third countries.**

Banks in third countries cannot process transactions related to Cuba in U.S. dollars because current regulations prohibit clearing these transactions through U.S. banks, which is how almost all international transactions are conducted. At present, if the transfer of a payment for a commercial transaction between a European company and a Cuban enterprise takes place in dollars and simply passes through a U.S. bank, both the European banking institution and the U.S. bank that facilitated the transaction can be fined. This means that if a legal business transaction is processed in dollars, banks in allied countries in Europe and Latin America are subject them to stiff penalties. Due to this policy, foreign banks have incurred billions of dollars in fines, deterring them from processing any transactions, even those that are technically legal.

This has not only made it harder for Cuba to integrate into the global financial system, but exasperated allies. The recent amendment to the regulations authorizing U.S. banks to engage in financial transactions that are otherwise authorized does not cover most international transactions. Adopt Treasury regulations to create a general license that would authorize U.S. banks to clear U.S. dollar transactions between third countries and Cuba, where the U.S. bank is simply an intermediary because the transaction was made in dollars. By doing this, President Obama can assuage the banks' fears of doing business with Cuba and signal

that the United States is not hostile to Cuban re-integration into the international economy.

What steps would significantly improve U.S.-Cuban relations by laying the groundwork for further cooperation and/or removing barriers to a constructive future?

1. The administration should eliminate programs that fail to advance democracy, prosperity, or human rights, particularly programs or policies that are damaging to a more constructive relationship with the Cuban government:

- a. End the Cuban Medical Professionals Parole Program, which offers incentives to Cuban doctors working abroad to leave their country and immigrate to the United States. The program is a provocation that provides no benefits to the United States, angers Cuba, and is an obstacle to cooperation on urgent global public health issues.

In addition to sending doctors to countries like Brazil and Venezuela to generate income, Cuba sends doctors all over the world in the wake of natural disasters and health crises, such as the Ebola outbreak in West Africa. Since 2006, the United States has approved over 7,000 applications from Cuban doctors to immigrate to the United States. This program has been a major sticking point in U.S.-Cuba relations, even more so than the Cuban Adjustment Act, or "wet foot, dry foot," as Cuba has claimed it aims to "deprive Cuba and many other countries of vital human resources." The Medical Professionals Parole Program also unnecessarily complicates the emerging U.S.-Cuba collaboration to confront global health emergencies. President Obama can end this program without Congressional action.

- b. Suspend the "democracy promotion" programs now funded through the State Department's Bureau of Democracy, Human Rights, and Labor (DRL) and the National Endowment for Democracy (NED), while conducting a review of existing programs to ensure they are consistent with the President's policies. This includes ensuring that grantees do not support "regime change" strategies.

Develop new program guidelines consistent with the administration's commitment to dialogue with Cuba. Revelations in the past about how far these programs have gone to undermine the Cuban government have caused serious rifts in the U.S.-Cuba relationship. Subjecting these programs to intense scrutiny would send a clear message that U.S.-Cuba relations are on a new course.

2. **The Attorney General should exercise her authority to end preferential treatment for Cuban migrants arriving at U.S. borders. She could then compensate by raising the quota of legal entries and exploring visa programs that permit Cuban professionals to study or work in the United States and then return home.**

Ending preferential treatment is especially important in light of the contrast between the treatment of Cuban migrants and that of other immigrant groups. Rescind the “automatic parole” into the United States, which the Cuban Adjustment Act permits but does not require, and return to a system in which undocumented Cubans arriving at U.S. entry ports are given the same field interview for asylum eligibility determination that all other migrants receive. Last year, nearly 45,000 Cubans arrived at U.S. southern border ports of entry and were paroled into the United States. As both U.S. legal residents and Cuban citizens they were able to contribute to the economies of both countries. Compensate for the changes that would end this advantage by increasing the number of visas available to Cuban migrants and by exploring visa programs that would permit Cuban professionals to study or work in the United States for fixed periods of time and then return home. By changing how we treat Cuba on migration issues, the United States will strike a blow at the human smuggling encouraged by automatic parole for Cubans who reach the U.S. border while also more broadly re-charting relations and expediting normalization.

3. **The administration should negotiate a settlement of the outstanding “certified property claims” and take steps to address the problems for trade and financial relations posed by a small set of unusual legal judgments.**

There are nearly 6,000 certified American claims of expropriated property in Cuba registered with the Justice Department’s Foreign Claims Settlement Commission (FCSC) totaling \$1.9 billion. With FCSC’s six percent annual interest rate, these claims are now worth \$7 billion. Cuba has settled property claims with every other country, negotiating acceptable arrangements that provided some compensation for claimants. At the same time, Cuba has claims against the United States for financial losses incurred as a result of the embargo. These claims settlements will be a deciding issue for key constituencies in the United States. The administration should reach an agreement with the Cuban government on existing outstanding claims.

In addition to the certified claims, there are a small number of legal judgments resulting from civil suits filed by aggrieved individuals against the Cuban government. These suits were filed during the period when Cuba was on the State Department’s “terrorist list” and therefore lacked sovereign immunity against certain types of lawsuits that normally protects foreign governments in U. S. courts. Cuba refused to contest the suits in U.S courts, objecting to its placement on the terrorist list and to the subsequent loss of sovereign immunity. Not surprisingly,

these suits ended with legal judgements against the Cuban government. Not only do many analysts question the legal basis for many of the judgements, the administration must somehow address the threat they pose to resumed commercial relations. As a first step, the administration should recognize that collecting any judgement against Cuba, like any transaction involving Cuban property, requires OFAC approval.



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In the U.S. relationship with Cuba, the President can take steps that would improve business opportunities, open new possibilities for U.S. philanthropy, expand American travel, bring health and medicinal benefits to the American people, and strengthen our security.

Actions by the administration would begin to yield concrete results such as business deals, new medical research, and foundation giving this year. This would be good for the United States and good for the Cuban people.

1. Further modify Office of Foreign Asset Control (OFAC) and Department of Commerce regulations governing exports to Cuba, imports from Cuba, and investments in Cuba that benefit the Cuban people. Regulatory changes will permit some U.S. businesses to come to agreements with Cuba this year, which will reinforce the interest of others in the business community.
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From: McLeod, Mary [REDACTED]
Sent: Thursday, February 11, 2016 7:22 AM
To: Visek, Richard C [REDACTED]
Subject: Re: Cuba claims

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No

Sent from my BlackBerry 10 smartphone.

From: Visek, Richard C
Sent: Wednesday, February 10, 2016 9:55 PM
To: McLeod, Mary
Subject: RE: Cuba claims

Do the capitals connote enthusiasm?

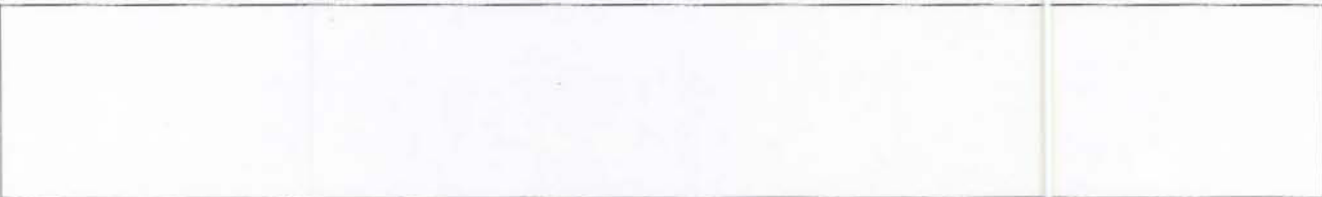
SBU
This email is UNCLASSIFIED.

From: McLeod, Mary
Sent: Wednesday, February 10, 2016 9:55 PM
To: Egan, Brian J.; Visek, Richard C
Subject: Re: Cuba claims

OK

Sent from my BlackBerry 10 smartphone.

From: Egan, Brian J.
Sent: Wednesday, February 10, 2016 9:42 PM
To: McLeod, Mary; Visek, Richard C
Subject: Cuba claims



B5