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Ten years ago, as Cuba suffered through the worst of its post-Soviet “special period,” President Fidel Castro decided to let off steam and call Washington’s open-armed bluff by allowing uninhibited emigration from the island. Though Castro had thrown down this particular gauntlet at least twice before, this time the results would be quite different. By the time the rafter exodus was halted in early September 1994, more than 30,000 Cubans had left the island and made it either to American shores or, temporarily, to a “safe haven” at Guantanamo. However, the special treatment that had greeted virtually all prior Cuban immigrants to the U.S. since 1959 came to a sudden and surprising end (Ackerman 1996; Ackerman and Clark 1995; LeoGrande 1998; Nackerud 1999).

As a result of a pair of bilateral migration accords between the two governments in September 1994 and May 1995, the U.S. granted Cuba an annual minimum of 20,000 legal immigrant visas and, at the same time, determined that Cubans picked up at sea would henceforth be sent home just as any other group of “illegal” immigrants (Rodríguez Chávez 1996). Thus, while the Clinton Administration allowed the Cuban rafters still in detention at Guantanamo to be gradually paroled into the U.S., it also sent a clear message to Castro, the Cuban people, and, perhaps most importantly, to the increasingly restrictionist American public: we had regained control of our borders and would no longer allow illegal immigration, even from enemy states like communist Cuba.

Notwithstanding Washington’s effort to construct an even-handed policy toward unauthorized immigration, the Clinton Administration’s supposed 180-degree policy change has turned out to be quite slippery in actual practice. Cuban rafters intercepted at sea are routinely *repatriated* to Cuba by the U.S. Coast Guard, but are almost never *deported* to Cuba after arriving in the

United States (Macgee 2000; Puzder 2004). Special treatment of Cuban immigrants continues despite the fact that both the original intent and immediate consequence of the migration accords was to halt unsafe, disorderly, and unauthorized immigration from Cuba to the United States (Alvarez 1995).

Reacting to our new policy of repatriation, Cuban migrants, fully aware of their continued special status under the 1966 Cuban Adjustment Act if they were able to make landfall here, have largely abandoned the dangerous and unreliable strategy of migrating in small rafts and increasingly opted to cross the sea in motorized speedboats with the aid of smugglers (LACCAR 1999). Are these people refugees from communism, desperate migrants hailing from a poor island nation, both, or something in-between? Before addressing this important question, let me point out a few lessons from the past decade:

- While dramatic landings and contested repatriations of Cuban rafters (a la Elian Gonzalez) have drawn much media attention in the ten years since 1994, a much more significant result of the 1994 migration accords has been the fact that the number of legal Cuban immigrants admitted to the U.S. since then (250,000) has dwarfed the number of Cubans arriving illegally by sea (10,000) (DHS 2003; USCIS 2004; USCG 2004; Arrington 2004).
- Cubans are neither the only nor the most numerous group of rafters setting sail for the U.S. Over the past decade the U.S. Coast Guard has intercepted far more Dominicans (19,953) and Haitians (14,956) than Cubans (8,675). These numbers indicate that what has often been interpreted as a Cuban crisis, is in fact a Caribbean (and even global) phenomenon, calling into question the continued appropriateness of special treatment for Cubans (USCG 2004).
- The U.S.-Cuba migration accords of 1994 and 1995 achieved short-term success in solving the problem of dangerous migration on the high seas and have encouraged “safe, legal, and orderly emigration” from Cuba to the U.S. through a generous policy of granting Cuba a minimum of 20,000 immigrant visas annually (USDS 2000).
- However, at the time few observers realized the implication of the fact that neither the September 1994 nor the May 1995 migration agreement addressed the continued applicability of the 1966 Cuban Adjustment Act (Meissiner 1999). This is the case even if the September 1994 agreement clearly stipulated: “the U.S. has discontinued its practice of granting parole to all Cuban migrants who reach U.S. territory in irregular ways” (Rodríguez Chávez 1996). In practice, this has meant that virtually all Cubans who make it to U.S. territory, by whatever means, are permitted to stay.

While the Cuban Adjustment Act has received much attention recently as the legal basis for the so-called “wet-foot, dry-foot” policy, few people understand its origins and the nuances of its current application. Though originally passed during the cold war, the Act was not primarily intended as an ideological beacon giving welcome and granting protection to refugees from communism. Instead, it was a practical solution to the fact that most Cuban

exiles who came to the U.S. after 1959 entered without a fixed legal status, not expecting to stay for very long. However, by 1965 it was apparent that the revolution had been consolidated and the over 250,000 Cubans in the U.S. who had expected to be “next year in Havana” (as the perennially hopeful Miami bumper sticker declares) would need to legalize their immigration status. Thus, the original intent and function of the passage of the Act in 1966 was simply to allow Cubans already physically present in the U.S. to adjust their immigration status from a situation of limbo to that of permanent residency (del Castillo 2000).

It is often incorrectly assumed that the law’s current applicability is automatic, and that any change would need to pass through Congress. However, granting parole to all Cuban arrivals is not a mandate of the Cuban Adjustment Act. Instead, the Act only grants the attorney general the authority to do so. However, given the strength and focus of the Cuban-American lobby, the political will necessary to revoke or reinterpret the Act or to implement a deportation agreement with the Cuban government will be lacking as long as the potential costs are greater than the benefits for U.S. elected officials (Smith 2002).

In fact, the controversial new restrictions that limit the return visits of Cuban-Americans to just once every three years seem inspired in part by the logic inherent in the current application of the Act. In other words, the special treatment that Cuban arrivals continue to receive is based on the presumption that they fear persecution in Cuba. In effect, we are demanding that Cubans act like refugees, when in fact few are. While generalized political repression is a systematic part of Cuban life, few recent migrants can legitimately claim to have suffered personal persecution while in Cuba (the international criteria for refugee status) or fear it upon their return to the island as visitors. Of course, this fact has long been a taboo among Cuban-Americans. However, with the Bush Administration’s recent curtailment of their right to travel, many have begun to speak out.

While the current interpretation of the Cuban Adjustment Act is in direct violation of the September 1994 migration agreement, which promised to deny entry to unauthorized Cuban arrivals, the U.S. has never specifically promised to return them to Cuba, nor has the Cuban government ever agreed to receive them. In fact, apart from a small number of Mariel “excludables,” the Cuban Government has balked at accepting any Cuban deportees (del Castillo 2000). Indeed, the existence of the Act allows each government to accuse the other for contradictory and inhumane migration policies. Both governments are right.

On the American side, the U.S. Interest Section in Havana has repeatedly sought to discourage potential Cuban rafters from departing (in one case by

unsuccessfully attempting to have a warning video broadcast on state television), yet we reward those who make it across successfully by allowing them to stay (EFE 2004). We also seek to prosecute migrant smugglers for the crime of transporting illegal immigrants to the U.S., yet allow those migrants who pay them to obtain parole and eventual legal residency if they reach land.

Furthermore, we place an increasingly harsh economic embargo on the island, yet ignore the fact that the embargo itself contributes to conditions whereby more people will seek to emigrate by any means available, contradicting our efforts to achieve a safe, legal, and orderly migration policy (Nackerud 1999). There is a strange illogic to having an overall U.S. policy, strengthened by the May 2004 measures of the Commission for Aid to a Free Cuba, aimed at toppling the Cuban government by cutting off revenue to the island and exacerbating the economic crisis, yet at the same time allowing entry to all Cuban arrivals under the pretext that they are fleeing political persecution, not economic hardship (Rodríguez 2004).

If the U.S. allows Cubans access to the Cuban Adjustment Act based on the assumption that all of them fear persecution in Cuba, how is it that the Cuban government welcomes the vast majority of these same migrants back within a few years as tourists and family visitors? The answer is quite simple: the so-called traitors (*traidores*) of years past have become the dollar bringers (*trae-dolares*) of today; the infamous worms (*gusanos*) Castro rejected as scum in 1980 have been magically transformed by economic necessity into today's butterflies (*mariposas*).

On the Cuban side, Havana's justified criticisms of the Act (aka, *la ley asasina* – the murderous law) for encouraging perilous sea crossings ring hollow given its own restrictive and manipulative policies on the free emigration and return of its own citizens. Until Cuba ends its own anachronistic and repressive emigration policies, such as requiring an exit permit of all Cubans, harassing those who chose to emigrate, restricting the emigration of doctors and other professionals, and making unauthorized emigration a crime (Boucher 2004), the Castro government has little credibility in complaining about U.S. immigration policy, which already provides Cuba with access to an extremely generous level of legal immigration.

Likewise, while the Castro government has made a show of its recent, supposedly generous elimination of the costly and humiliating visa requirement for citizens returning for visits, it still requires them to have their passports pre-screened ("*habilitados*") before returning, reserves the right to deny any citizen access to their homeland, refuses to allow those who have emigrated to return home again permanently, and continues to cynically manipulate its migration policies for financial and political gain (Cancio Isla 2004;

Suárez 2004). In sum, Cuba's current emigration policies toward those who live on the island, as well as its return policies toward émigrés, treat the Cuban people essentially as subjects, not citizens, reserving for itself the right to deny exit permits and/or return visits to anyone and effectively holding some Cubans hostage inside the country while banishing others from ever returning (Blanco 2004).

The ultimate irony in the current application of the Cuban Adjustment Act is the very real probability that it will finally be revoked only after Castro and his regime no longer control the Cuban government. If this were to happen, the current Cuban government would get its wish that the U.S. cease encouraging Cubans to emigrate only after (and directly because) it has ceased to exist. Of course, U.S. politicians are likely to argue that there is no longer a "need" for such special treatment in a post-Castro Cuba. However, pressure to emigrate from Cuba is likely to increase not decrease in the foreseeable post-Castro future (Estévez 2004; Werlau 2004).

A final irony is the fact that in recent years more Haitians, Dominicans, and even Ecuadoreans have attempted clandestine maritime entry to the U.S. than have Cubans (USCG 2004; Thompson and Ochoa 2004). This fact undermines the Cuban government's claim that it is merely the Cuban Adjustment Act, not its own failed political and economic policies, that pulls Cubans to the U.S. and causes them to unnecessarily risk their lives at sea. Persons of many nationalities continue to set out for the U.S. in great numbers, knowing that upon arrival they will not be able to take advantage of such a generous exception to U.S. immigration law, as can Cubans.

The challenge presented by the refugee is nothing new, nor has it gone away. While the end of the cold war was used for a time as an explanation of the reduced numbers of refugees around the world, such logic only reinforces problematic ideological refugee criteria based on the dubious assumption that only communist regimes practice repression. The Cuban government likes to claim that all Cuban émigrés are economic immigrants, while the U.S. has a similar tradition of labeling all Cuban arrivals political refugees. In reality, the determination of an individual migrant's actual mix of motivations is rarely so simple. There continues to be a need to treat all Cuban (and Haitian, and Dominican, and...) migrants with the dignity that any human being deserves, without blindly labeling them all political refugees on the one hand or illegal immigrants on the other.

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