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Cuban Migration Policy and Issues

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Summary

Many of the issues surrounding Cuban migration are unique but not new. Normal immigration from Cuba has been elusive since Fidel Castro came to power. Over the past 40 years, the practice of Cubans fleeing by boat to the United States has become commonplace, and at some points reached the levels of a mass exodus. Since the last upsurge of “boat people” in the mid-1990s, the United States and Cuba worked toward establishing safe, legal immigration, which include returning migrants interdicted by the U.S. Coast Guard. Cuban interdictions hit a ten-year high of 2,712 in FY2005. These migration policies are not without critics. The January 2006 return of 15 Cubans apprehended by the U.S. Coast Guard on an old, unused Key West bridge has renewed calls for a reconsideration of the interdiction policy.

Background

Between 1962 and 1979, hundreds of thousands of Cubans entered the United States under the Attorney General’s parole authority, many of them arriving by boat. In 1980, a mass migration of asylum seekers — known as the Mariel boatlift — brought approximately 125,000 Cubans (and 25,000 Haitians) to South Florida over a six-month period. After declining for several years, Cuban “boat people” steadily rose from a few hundred in 1989 to a few thousand in 1993. After Castro made threatening speeches in 1994, riots ensued in Havana, and the Cuban exodus by boat escalated. The number of Cubans intercepted by the U.S. Coast Guard or the U.S. Border Patrol reached a post-Mariel high of almost 40,000 in 1994.

Until 1995, the United States generally had not repatriated Cubans (except certain criminal aliens on a negotiated list) under a policy established when the government became Communist within two years of the 1959 revolution. Not only has the United States been reluctant to repatriate people to a Communist country, but the Cuban

government typically has also refused to accept Cuban migrants who are excludable under the Immigration and Nationality Act (INA).¹

Cuban Adjustment Act of 1966

Most of the undocumented Cubans who arrive in the United States are allowed to stay and adjust to permanent resident status under the Cuban Adjustment Act (CAA) of 1966 (P.L. 89-732).² CAA, as amended, provides that certain Cubans who have been physically present in the United States for at least one year may adjust to permanent resident status at the discretion of the Attorney General — an opportunity that no other group or nationality has. The alien must be eligible to receive an immigrant visa and be admissible to the United States as a legal permanent resident (LPR). Spouses and children accompanying the aliens who are applying for this adjustment are also covered by CAA. Cubans apply to the U.S. Citizenship and Immigration Services (USCIS) in the Department of Homeland Security (DHS) to adjust as LPRs under CAA.

CAA predates the Refugee Act of 1980, the law that incorporates refugee and asylum principles into INA.³ The legislative debate leading up to its enactment makes clear that persons fleeing Cuba are presumed to be refugees under international law, but the CAA does not use the language or definitions commonly used for refugee and asylee.⁴ Legislative efforts to “sunset” CAA or repeal it outright have not been successful however, in 1996 Congress enacted language stipulating that CAA would be repealed when Cuba became a democracy.⁵

Cuban Migration Agreement, September 1994

“Normalizing” migration between the two nations was the stated purpose of the migration agreement signed on September 9, 1994, when the status quo of U.S. policy toward Cuban migrants was altered significantly. The plan’s objectives of safe, legal, and orderly immigration relied on six points.

- The United States agreed to no longer permit Cubans intercepted at sea to come to the United States; rather, Cubans would be placed in a safe haven camp in a third location. Justifying this policy as a “safety of life

¹ Cubans who have been convicted of crimes in the United States pose complex problems, as Cuba is among a handful of nations that does not generally accept the return of criminal aliens.

² Act of Nov. 2, 1966; 80 Stat 1161.

³ As a signatory to the United Nations Protocol Relating to the Status of Refugees, the United States agrees not to return an alien to a country where his life or freedom would be threatened.

⁴ A refugee is a person who is unwilling or unable to return to his home country because of a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group or political opinion. The notable difference between a refugee and asylee is the physical location of the person seeking the status. Those in the United States apply for asylum, while those abroad apply for refugee status.

⁵ Section 606 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Division C of P.L. 104-208.

at sea” issue, Cuba also agreed to use “persuasive methods” to discourage people from setting sail.

- United States and Cuba reaffirmed their support for the United Nations General Assembly resolution on alien smuggling. They pledged to cooperate in the prevention of the illegal transport of migrants and the use of violence or “forcible divergence” to reach the United States.
- The United States agreed to admit no less than 20,000 immigrants from Cuba annually, not including the immediate relatives of U.S. citizens.
- The United States and Cuba agreed to cooperate on the voluntary return of Cubans who arrived in the United States or were intercepted at sea.
- The United States and Cuba did not reach an agreement on how to handle Cubans who are excludable under the INA, but they did agree to continue discussing the matter.⁶
- The United States and Cuba agreed to review the implementation of this agreement and engage in further discussions.

It became apparent that the 20,000 minimum level per year could not be met through the INA preference system or the refugee provisions because of the eligibility criteria. In addition to those Cubans who may qualify to immigrate through the INA preference system and who may qualify as refugees, the United States decided to use other authority in the law (i.e., parole), to allow Cubans to come to the United States and become LPRs through the CAA. Specifically, a “visa lottery” program was established to randomly select who, among the many Cubans seeking to migrate, receives a visa.

Cuban Migration Agreement, May 1995

On May 2, 1995, the Clinton administration announced a further agreement with Cuba that resolved the dilemma of the approximately 33,000 Cubans then encamped at Guantanamo. This new agreement, which came at the time of year when boat people traditionally begin their journeys, had two new points. Foremost, the United States allowed most of the Cubans detained at Guantanamo to come to the United States through the humanitarian parole provisions of the INA. Cuba agreed to credit these admissions toward the minimum 20,000 LPRs per year from Cuba, with 5,000 charged annually over three years. Secondly, rather than placing Cubans intercepted at sea in safe haven camps, the United States began repatriating them to Cuba. Both parties promised to act in a matter consistent with international obligations and to ensure that no action is taken against those repatriated. U.S. officials would inform repatriated Cubans about procedures to legally immigrate at the U.S. Interests Section in Havana. Those charged with alien smuggling, however, do face prison terms in Cuba.

Interdicted Cubans are given an opportunity to express a fear of persecution if returned to Cuba. Those who meet the definition of a refugee or asylee are resettled in a third country. From May 1995 through July 2003, about 170 Cuban refugees were resettled in 11 different countries, including Spain, Venezuela, Australia, and Nicaragua. The Department of State is required to monitor whether those migrants who are returned

⁶ Grounds for removal include health-related grounds; criminal grounds; national security grounds; Nazi persecution grounds; public charge grounds; illegal entry and immigration law violations; and lack of proper immigration documents. §212(a) of INA; 8 U.S.C. 1182(a).

to Cuba are subject to reprisals.⁷ In May 2004, DOS noted that it has been unable to monitor returnees outside Havana since March 2003.

Migration talks are supposed to occur twice yearly. No migration talks have been held since January 2004, however, because the DOS cancelled them due to Cuba's refusal to discuss the following key issues: Cuba's issuance of exit permits for all qualified migrants; Cuba's cooperation in holding a new registration for an immigrant lottery; the need for a deeper Cuban port utilized by the U.S. Coast Guard for the repatriation of Cubans interdicted at sea; Cuba's responsibility to permit U.S. diplomats to travel to monitor returned migrants; and Cuba's obligation to accept the return of Cuban nationals determined to be excludable from the United States.⁸

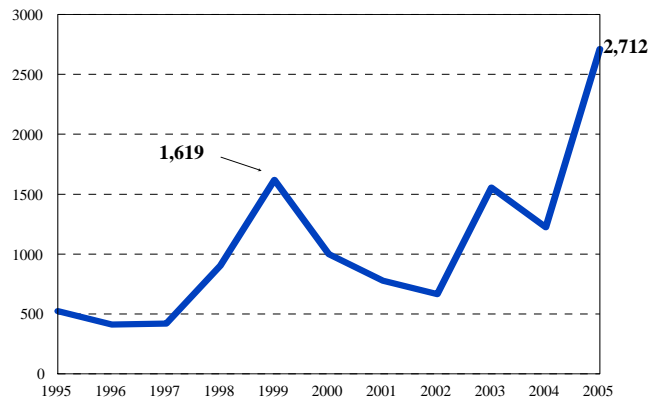
As a consequence of the migration agreements and interdiction policy, a “wet foot/dry foot” practice toward Cuban migrants has evolved. Put simply, Cubans who do not reach the shore (i.e., dry land), are returned to Cuba unless they cite fears of persecution. Those Cubans who successfully reach the shore are inspected by DHS and generally permitted to stay in the United States and adjust under CAA the following year.

The United States continues to conduct in-country refugee processing in Cuba.⁹ In FY2004, USCIS reported that it considered 8,658 Cubans for refugee status and approved 5,670 (65%). In FY2005, it approved 4,090 of the 6,594 refugee applicants (62%).¹⁰

Coast Guard Interdictions

Since the May 1995 agreement, the U.S. Coast Guard has interdicted about 12,680 Cubans at sea and returned most of them to Cuba. Interdictions were low during the first few years after the migration agreement (e.g., 411 in FY1996, and 421 in FY1997). The number of Cuban interdictions more than doubled between FY1997 and FY1998 — when 903 Cubans were interdicted — and reached 1,619 in FY1999. Interdictions gradually dipped from 1,000 in FY2000 to 666 in FY2002. Maritime interdictions hit 1,555 in FY2003, then dipped to 1,225 in FY2004.

Figure 1. Maritime Interdictions of Cubans, FY1995-FY2005



Source: CRS presentation of U.S. Coast Guard data.

⁷ Pursuant to §2245 of P.L. 105-277, DOS makes a semi-annual report to Congress on the treatment of those returned.

⁸ U.S. Department of State, State Department Regular Briefing, Richard Boucher, Jan. 7, 2004.

⁹ CRS Report RL31269, *Refugee Admissions and Resettlement Policy*, by Andorra Bruno.

¹⁰ E-mail correspondence from the Office of Refugee Affairs, USCIS, DHS, Jan. 17, 2006.

Interdictions hit a 10-year high of 2,712 in FY2005. As of January 19, 2006, the U.S. Coast Guard has interdicted 866 Cubans in FY2006.

Of the 2,712 Cubans interdicted in FY2005, approximately 2,400 expressed a fear of return. Of those, DHS determined that 2.5% had a credible fear of return to Cuba and were taken to Guantanamo for further screening. At Guantanamo, 47% were found not to meet the refugee definition and were returned to Cuba; 22% chose to voluntarily return to Cuba; 31% were found to have a well-founded fear and were referred to DOS for third country resettlement.¹¹

Special Cuban Migration Lottery

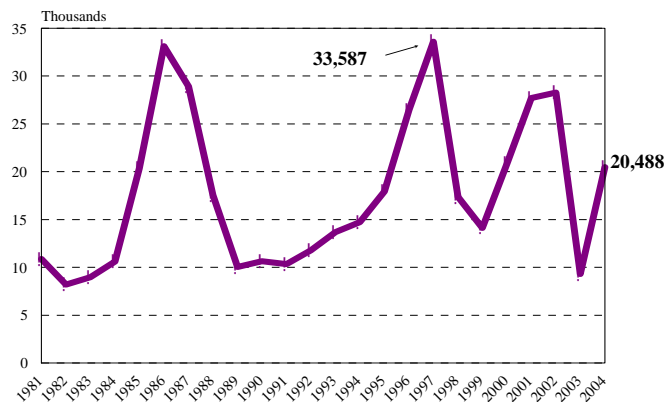
Since the 1994 migration agreement, the United States has conducted three visa lottery open seasons to implement the Special Cuban Migration Program. The three open seasons were at two-year intervals: FY1994, FY1996, and FY1998. The number of qualifying registrants has increased each year, from 189,000 in 1994, to 433,00 in 1996 and to 541,00 in 1998. Cubans qualifying through the 1998 lottery are still being paroled into the United States.

Eligible registrants must be Cuban citizens between 18 and 55 years of age. They also must be able to answer “yes” to two of the following three questions. Have you completed secondary school or a higher level of education? Do you have at least three years of work experience? Do you have any relatives residing in the United States? Once selected through the lottery, the successful applicants are given parole status with a visa that is good for six months. The medical examination, required of all potential immigrants, is good for one year. Spouses and minor children may accompany the successful registrants. Over the years, there have been reports of barriers the potential Cuban parolees face, such as exorbitantly-priced medical exams, exit visas fees, and repercussions for family members who remain in Cuba.

Trends in Cuban Admissions

In terms of total immigration from Cuba (i.e., as immediate relatives of U.S. citizens, as legal immigrants through the preference system, as refugees, as parolees or other adjustments through CAA or through the Nicaraguan Adjustment and Central American Relief Act), 425,884 Cubans have become LPRs from FY1981 through FY2004. Of that number, almost 51% have become LPRs since the 1994

Figure 2. LPRs from Cuba, FY1981-FY2004



Source: CRS presentation of DHS Office of Immigration Statistics data.

¹¹ E-mail correspondence from the Office of Refugee Affairs, USCIS, DHS, Jan. 17, 2006.

migration agreements. Cuba consistently ranks among the top ten source countries for LPRs coming to the United States.

Reoccurring Issues

A well-publicized incident in June 1999 provoked outrage when the U.S. Coast Guard used pepper spray and a water cannon to prevent six Cubans from reaching Surfside Beach in Florida. A few weeks later, a woman drowned when a boat capsized during interdiction. Notably in late November 1999, the U.S. Coast Guard opted to bring six-year old Elian Gonzalez and two other survivors of an ill-fated journey to the United States rather than taking them to Cuba as the migration agreement provides.

On March 18, 2003, the Cuban government began a massive crackdown on independent journalists, leaders of independent labor unions and opposition parties, and other democracy activists. On April 11, 2003, the Cuban government executed three men who had hijacked a ferry in Havana on April 2 in an attempt to reach the United States. The men were executed by firing squads after summary trials that were held behind closed doors. International human rights groups, such as Amnesty International and Human Rights Watch, and a number of countries, including Mexico, the European Union, and the 15-nation Caribbean Community, condemned the crackdown and the executions.¹²

In July 2003, a dozen people reportedly stole a Cuban-flagged boat from the marina where it was docked in Cuba and kidnaped the three watchmen guarding the marina in the process. When the boat was in international waters allegedly on route to Florida, Coast Guard officials tried to intercept it and reportedly faced violent resistance when they interdicted the vessel. All 15 persons on board were taken to the U.S. Coast Guard cutter and interviewed by a USCIS asylum officer. The three watchmen indicated a desire to return to Cuba. When the Cuban government offered to sentence the 12 persons implicated in crimes (purportedly boat theft, kidnaping, and assaulting federal officers) to 10 years in prison, the United States agreed to return them.

On January 5, 2006, the Coast Guard found 15 Cubans, including four women and two children, on an old Key West bridge that is no longer connected to land. The decision to repatriate the Cubans was made by the Coast Guard's legal office in conjunction with Immigration and Customs Enforcement. The Coast Guard stated that the Cubans "were determined to be wet-feet and processed in accordance with standard procedure."¹³

Supporters of these repatriation decisions argue that it is critical to deter illegal and dangerous migration of Cubans who flee on unseaworthy or overcrowded vessels. They further maintain that the negotiated prison sentences were essential to prevent a repeat of summary executions that occurred to the hijackers in April. Critics of these decisions assert that both countries (United States and Cuba) are denying these people their rights to due process and a hearing. Some are calling for a full investigation of these incidents, and some are seeking an end to the current interdiction and repatriation policy.

¹² CRS Report RL32730, *Cuba: Issues for the 109th Congress*, by Mark Sullivan.

¹³ *Florida Sun-Sentinel*, "Cubans repatriated after feds say abandoned Keys bridge is not U.S. soil," by Madeline Baró Diaz, Jan.10, 2006.