Retreat from Reason

U.S.-Cuban Academic Relations and the Bush Administration
The Latin America Working Group Education Fund conducts public education to encourage U.S. policies that promote human rights, justice and peace in Latin America. The LAWGEF serves a coalition of nongovernmental, religious, humanitarian, and grassroots organizations.

Retreat from Reason: U.S.-Cuban Academic Relations and the Bush Administration was compiled by Kimberly Stanton, Associate Director, Project Counselling Services. It reports the research and analysis done by a bi-national working group, supported by the Ford Foundation and composed of the following members:

Carlos Alzugaray, Professor, Higher Institute of International Relations, Havana
Soraya Castro, Senior Researcher, Center for the Study of the United States, University of Havana
Sheryl L. Lutjens, Professor, Political Science Department, Northern Arizona University
Milagros Martinez, Senior Advisor, International Relations, University of Havana
Louis A. Pérez, Jr., J. Carlyle Sitterson Professor, History Department, University of North Carolina, Chapel Hill
Kimberly Stanton, Associate Director, Project Counselling Services
EXECUTIVE SUMMARY

Since 2000, the administration of President George W. Bush has promoted increasingly alarming limitations on academic, scientific, and cultural exchanges between Cuba and the United States. The administration has resuscitated a visa policy that discriminates on the basis of ideology and political affiliation, has severely curtailed travel by Cuban Americans seeking to visit their families—contravening international anti-discrimination law and the right to travel—and has set aside legislative intent by eliminating two categories of travel, people-to-people exchanges and fully-hosted travel, understood to have been written into law and thus no longer subject to such executive action. Throughout the more than forty years of U.S. unilateral economic sanctions against Cuba, it is scholars and scientists in the two countries who have maintained intellectual and academic relations. The history of academic exchange and collaboration between Cuba and the United States, including the legal and policy instruments that have constructed U.S. sanctions on trade and travel, the development and outcomes of scholarly collaborations and institutional programs since 1959, and the place of academic exchange in foreign policy dynamics, helps to interpret the significance of current changes in U.S. policy and procedures and the consequences of the restrictions implemented by the Bush Administration.

The Bush Administration policy of political interference in academic, scientific and intellectual exchange between the United States and Cuba, contextualized by the implications of Homeland Security policies and structures for educational activities and exchange, is clearly outlined in the 2004 report of the Commission for Assistance to a Free Cuba (the Powell Commission report). Although implemented in the context of the global war against terrorism, the policy has not been justified on anti-terrorism grounds. Instead, it is part of a general tightening of U.S. sanctions against Cuba, the Cold War-era policy that has failed to achieve its objective of overthrowing the Cuban government. Today the U.S. government has decided to drastically reduce the people-to-people engagement between the two countries, while promoting the cut-off of dollars to the island. For the current U.S. administration, a battle of ideas that changed the minds of many U.S. citizens has given way to an ever more explicit strategy of seeking to deprive Cubans of material sustenance with hopes of fomenting political opposition. Ironically, the new restrictions on academic and educational exchange are being implemented in the name of promoting democracy.

A careful study of the historical dynamics of academic exchanges that had developed through the 1990s informs recommendations for their recuperation in the present period and proposals for new and creative alternatives that might enrich and expand the possibilities for institutional and individual collaborations. The U.S. government, Congress, and the academic community must pursue the restoration of the freedom of expression and the right to travel as well as an end to the politicization of the visa process, the unconstitutional limitation of the academic freedoms of scholars and educational exchange programs, and to the travel ban itself. Cuban universities and academic institutions should make full use of all existing opportunities to engage scholars and intellectuals from the United States. At this critical juncture, the U.S. and Cuban academic communities should join forces to think creatively about ways to maximize the opportunities that do exist for exchanges and collaborations under the current sanctions regulations. In today’s complex, globalized, conflict-ridden world, it is past time to recognize the positive contributions of this form of transnational collaboration for easing of tensions and the resolution of conflict.
INTRODUCTION

The electoral victory of George W. Bush in 2000 and the tragic events of September 11, 2001, marked the onset of increasingly alarming limitations on academic, scientific, and cultural exchanges between Cuba and the United States. Well-established and prestigious programs of U.S. academic and cultural institutions encountered new licensing regulations and procedures, while a precipitous decline occurred in State Department approvals of visas for Cuban academics and intellectuals invited to travel to the United States as part of ongoing exchange programs and activities. Accompanied by increasing difficulties in raising the funding needed to fully realize the potential of exchange visa procedures to which Cuban scholars are subject, government travel restrictions, and the frequent revisions of unilateral sanctions against Cuba have created problems of daunting proportions. On the Cuban side, difficulties in obtaining access to research facilities and authorization to conduct field research on the island have at times acted to impede outside initiatives. Sometimes these impediments have been responses by Cuban authorities to U.S. efforts to undermine their government. Despite these and other obstacles, collaborative initiatives have persisted. The history of collaboration in past decades registered noteworthy and in many instances enduring gains, demonstrating that scholars from both countries have been a serious, determined, and productive lot.

What possibilities exist for recuperating academic relations between Cuba and the United States, given the effective elimination of the majority of the study abroad programs in Havana, new restrictions on travel by U.S. academics to Cuba, and the denial of non-immigrant visas to Cuban scholars invited to the United States?

Concerned with the growing restrictions on academic exchange and their effects, a bi-lateral working group of six professionals with expertise and experience in the issues of U.S.-Cuba relations in general, and academic exchanges more specifically, began in 2004 to study the problematic changes of the 2000s. Supported by a Ford Foundation grant, the University of

* The Commission was reconvened in 2006 by Secretary of State Condoleezza Rice and its report was made public in July 2006, just as this document was being readied for publication.
Havana, and the Cuban Higher Institute of International Relations, our project posed two related questions:

**What possibilities and alternatives exist for academic exchange between Cuba and the United States at the present time?**

**What new scenarios are possible given current conditions?**

Believing that an understanding of the history of academic exchange and collaboration and the dynamics of institutional and professional relationships that have developed over time is necessary to interpret current changes in U.S. policy and procedures and their consequences, we began by documenting the patterns in academic relations between Cuba and the United States after 1959, as they were shaped by changing political contexts. Our analysis of these patterns is used to explain the significance of the restrictions implemented by the Bush Administration, to identify a set of recommendations for recuperating academic relations that had developed to the 2000s, and to propose new and creative alternatives that might enrich and expand the possibilities for academic exchange at the present moment.

This report of the working group’s research and recommendations recognizes that Cuban policies, procedures, and expectations with regard to academic and intellectual relations with the United States must also be understood. As critical social theory proposes, the production and distribution of knowledge are crucial elements of power and international, national, and local politics. Educational and intellectual accomplishments in Cuba suggest that Cuban interest in academic relations with the United States is no simple reflection of U.S. policy or an (im)balance of power. Yet the necessary understanding of the past and speculation about the future of academic relations underscores the unreasonable constraints imposed through U.S. policies and procedures, including the challenges of finances (funding and spending)—constraints that have affected the project itself in our two years of work.2

Our research explored multiple dimensions of the history and dynamics of academic exchanges between Cuba and the United States, including the legal and policy instruments that have constructed U.S. sanctions on trade and travel, the development and outcomes of scholarly collaborations and institutional programs since 1959, the place of academic exchange in foreign policy dynamics, the implications of Homeland Security policies and structures for educational activities and exchange, and the changes promoted by the 2004 Powell Commission report. In the summer of 2004, the working group prepared a survey on the future of U.S.-Cuba scholarly relations, inviting the participation of scholars specializing in U.S.-Cuba relations, inviting the participation of scholars specializing in Cuba and U.S.-Cuban relations. The project benefited from the responses of 59 U.S.-based and 43 Cuban academics. A workshop on academic exchange was also held at the University of Havana on November 8, 2004. The observations, criticisms, and suggestions offered by participants in the survey and workshop have informed our analysis and the range of recommendations we make.3

---

1 Members of the working group include: Milagros Martínez, Senior Advisor, International Relations, University of Havana; Soraya Castro, Senior Researcher, Center for the Study of the United States, University of Havana; Carlos Alzugaray, Professor, Higher Institute of International Relations, Havana; Louis A. Pérez, Jr., J. Carlyle Sitterson Professor, History Department, University of North Carolina, Chapel Hill; Kimberly Stanton, Associate Director, Project Counselling Services; and Sheryl L. Lutjens, Professor, Political Science Department, Northern Arizona University.

2 The development of our project was seriously affected by the regulations that went into effect at the end of June 2004, as well as by the Bush Administration’s policy of denying visas to Cuban academics, intellectuals, artists, and musicians. Among other difficulties created by changing circumstances, our planned meeting at the Latin American Studies Association Congress in Las Vegas at the start of October 2004 could not be held because the three Cuban members of the working group were denied visas. Rescheduling was delayed by OFAC’s position that our grant monies could not be spent for travel by the Cuban members to a third country.

3 A detailed report of the survey and its findings is available at the web site of the Latin American Studies Association Section for Scholarly Relations with Cuba, www.cubasection.org.
Institutional exchanges and scholarly collaboration have endured decades of adversity and reversals, and speak to the resilience of commitments to pursue projects of mutual interest. Collaboration has involved scholars and researchers representing the full breadth of the social sciences and humanities, as well as the natural sciences, medicine, the performing arts, and archival management. It has borne fruit in a variety of forms, including joint publications, joint panels at scholarly meetings, the exchange of resources and research materials, and the general advancement of science in both countries. It is our hope that this report will contribute to the recovery of academic and intellectual exchanges disrupted or diminished by present U.S. policies, and at the same time inspire innovative and imaginative alternatives for institutional and individual collaboration.

The members of the working group would like to acknowledge the institutional support that made possible this collaborative project, thanking the Ford Foundation, the Vice Rectory for International Relations of the University of Havana, and the College of Social and Behavioral Sciences of Northern Arizona University. Numerous individuals must also be recognized for their contributions to this project, both direct and indirect: Cristina Eguizabal of the Ford Foundation, our program officer; Cristina Díaz López, Vice Rector of International Relations of the University of Havana; Margaret E. Crahan, pioneer and ardent defender of academic exchanges between the United States and Cuba; Dagoberto Rodríguez Barrera, Chief of the Cuban Interests Section, and Wayne Smith, Senior Fellow and Director of the Cuba Program at the Center for International Policy, both of whom granted informal interviews in Washington, D.C. in April 2004; Aida Mieres of the University of Havana who provided leadership for the November 8 workshop in the University of Havana; and Jules Benjamin, Philip Brenner, Wayne Smith, Franklin Knight, Barry Sklar, Saul Landau, Scott Armstrong, William LeoGrande, Jean Weisman, Nelson P. Valdés, Michael Erisman, Susan Eckstein, Lars Schoultz, Jorge Domínguez, Ricardo Alarcón de Quesada, Mirta Aguirre, Oscar Pino Santos, among others, whose published scholarship provides signposts for understanding the distinct stages through which bilateral academic collaboration and exchange have passed since 1959. For research assistance provided, we thank Adriel I. Cepeda, intern at the Washington Office on Latin America; Beth Brown, Ph.D. student in the Political Science Department at Northern Arizona University; and Carmen Castillo, assistant to the Vice Rector of International Relations of the University of Havana. We also thank Debra Evenson, attorney with the firm of Rabinowitz, Boudin, Standard, Krinsky, and Lieberman for her analysis and wise suggestions. For shepherding the document through production, we thank the Latin America Working Group Education Fund, especially Mavis Anderson, Allison Chandler and Claire Rodriguez. Finally, but no less important, we would like to thank family and friends not named here, but whose sharp criticism and cogent suggestions have contributed to our analytical efforts.
Academic and educational exchanges between Cuba and the United States should be guided by internationally recognized norms of freedom of thought and expression, and due respect for sovereignty, independence and self-determination. Exchange programs should be conducted on the basis of mutual respect and benefit. Academic relations should not be employed as a foreign policy instrument, nor regulated for political, ideological or foreign policy ends.

For the United States government:

- The United States should adopt and actively implement a policy of greatly expanded engagement and exchange between U.S. and Cuban academic and research institutions at all educational levels.
- Presidential Proclamation 5377 of 1985 should be rescinded and the politicization of decisions about the entry of Cubans using Section 212(f) of the Immigration and Nationality Act (1952) should end. Cuban scholars, researchers and analysts should not be denied visas because they are employed by the Cuban state or due to their political affiliation, ideology, or nationality.
- The prerogative of United States colleges and universities to develop, structure and control their curricula free of intervention by the federal government must be respected. The federal government should have no role in determining the content, length, student eligibility requirements, or credit status of educational programs with Cuba.
- Transactions and travel incident to educational activities, including graduate, undergraduate and short-term educational exchanges carried out under the auspices of accredited U.S. academic institutions, should be authorized by general license.

For the United States Congress:

- The Congress should insist that the executive branch comply with congressional intent in regard to freedom of travel and expression, as clearly expressed in the Free Trade in Ideas Act.
- Legislation to end the ban on travel by U.S. citizens to Cuba should be passed again as soon as possible.
- House and Senate leaders should uphold American values and respect the democratic process by recognizing the support of their members in favor of ending travel restrictions. Provisions to end travel restrictions approved by the House and Senate should not be stripped from final legislation in conference committee under threat of a presidential veto.
- The Congress should undertake a comprehensive review of the impact of post-9/11 visa policies on freedom of expression and association as exercised through academic exchange, with the
goal of correcting any negative effects through legislation. The review should include, but not be limited to, the impact on academic relations with Cuba.

**For the U.S. academic community:**

- Universities, academic institutions, and public education organizations should continually press for their right to engage Cuban scholars and intellectuals, regardless of their place of employment, by taking full advantage of all opportunities provided for in the current U.S. regulations.\(^4\)

  Steps should include:
  - Developing semester-long courses to be offered at Cuban universities for both U.S. and Cuban students, for credit in the students’ home institutions.
  - Establishing extended visiting faculty or research opportunities for Cuban scholars and scientists.
  - Making full use of telecommunications, electronic and internet technologies, such as teleconferencing and web page links for both research and educational purposes.
  - Increasing the number of longer-term collaborative research projects.
  - Developing joint publications programs.

- Academic, educational and cultural institutions should actively and continuously engage the Congress and administration officials, insisting that policies and regulations that limit academic and intellectual engagement with Cuba be rescinded immediately.

- Professional associations headquartered in the United States should consider holding their international meetings in third countries to facilitate the participation of Cuban scholars and intellectuals.

- Foundations and donor agencies should increase the funding available to promote and sustain academic and intellectual engagement between the United States and Cuba, bilaterally and through projects and programs that involve third countries.

- Institutions committed to academic engagement with Cuba should explore political and legal strategies to hold the Bush Administration accountable for its failure to comply with congressional intent on travel, as expressed in the 2000 Trade Sanctions Reform and Export Enhancement Act.

- U.S.-based academic and research institutions should make public the sources of funding for their collaborative projects with Cuba.

**For Cuba:**

- Cuban scholars should continue to request visas for academic travel and work in the United States, with the full support of their home institutions.

- Cuban universities and academic institutions should make full use of all existing opportunities to engage scholars and intellectuals from the United States. The Ministries of Foreign Relations, Higher Education, Culture, and Sciences, Technology and Environment should continue to do everything possible to facilitate engagement between the Cuban and United States academic and intellectual communities. Steps should include:
  - Providing clear, accurate, up-to-date information on what is allowable under current U.S. regulations.
  - Renewing efforts to improve coordination and expedite approvals for academic exchange programs and collaborative projects.

\(^4\) See Appendix 1.
Academic and educational exchanges between Cuba and the United States should be guided by internationally recognized norms of freedom of thought and expression. Academic relations should not be employed as a foreign policy instrument.

- Special attention to developing new joint publications programs.
- Cuban authorities should continue to facilitate bilateral academic exchanges.

For both countries:
- Representatives of the academic communities of both countries should join together to establish a comprehensive clearinghouse to examine government policies toward academic exchange. The clearinghouse should:
  - Develop clear, accurate, up-to-date educational materials to facilitate understanding of U.S. regulations as they affect academic and intellectual engagement.
  - Keep abreast of developments in Cuba that might have an impact on opportunities for scholarly engagement with the island.
- Monitor U.S. government decisions regarding requests for specific licenses for educational activities (until general licenses are reinstated) and visas for Cuban scholars.
- Issue regular reports on the state of cultural, scientific, and educational exchanges between Cuba and the United States.
In fall 2004, the United States Department of State denied visas to more than sixty Cuban scholars who had been accepted to participate in the XXV International Congress of the Latin American Studies Association (LASA), scheduled for October 7-9, 2004, in Las Vegas, Nevada. The visa requests had been pending since May. The U.S. Interests Section in Havana informed the Cuban authorities of the denials on September 28.

In explaining the decision, State Department spokesman Richard Boucher made clear that the visas had been denied “as a group” and on political grounds:

...this was a group I think of 67 Cuban officials, who were intending to come to a conference, noted that the number is approximately—I think 68 is the current number of dissidents that Cuba has thrown in jail and is persecuting in its jails, and we just felt it wasn’t appropriate for this many Cuban government officials, “academics,” to come to a conference to spout the party line...

Engagement and dialogue is [sic] not an end in itself. Engagement and dialogue is [sic] a means to achieve U.S. interest...

the primary purpose of denying these visas is...to bring the pressure on the Cuban Government and on people who are employed by the Cuban Government so that they understand that their treatment of people in Cuba has implications....

Daniel Fisk, Deputy Assistant Secretary for Western Hemisphere Affairs in the State Department, reiterated the rationale on October 14:

We have instituted a policy to deny visas to Cubans involved in the March-April 2003 crackdown and sham trials of 75 peaceful Cuban activists. And to reinforce our objection to the continued wrongful detention of 68 of those 75 civil society activists, we recently denied visas to 67 Cubans, all of whom are employed by the Cuban government in its so-called university system.

The visa denial effectively prohibited all Cuban scholars from the island from participating in LASA for the first time since 1977. The Bush Administration’s “retreat from reason” was repeated in early 2006 when 58 visas were denied to Cuban scholars and researchers who were scheduled to participate in the XXVI LASA Congress in San Juan, Puerto Rico.

These decisions are particularly egregious examples of a policy of political interference by the administration of President George W. Bush in academic, scientific and intellectual exchange.

---

5 With over 5,000 members, LASA is the largest multidisciplinary professional association for individuals and institutions engaged in the study of Latin America. Its mission “is to foster intellectual discussion, research, and teaching on Latin America, the Caribbean, and its people throughout the Americas, promote the interests of its diverse membership, and encourage civic engagement through network building and public debate.” See http://lasa.international.pitt.edu/aboutlasa.htm.


8 In 1985, on the occasion of the XII LASA Congress en Albuquerque, New Mexico, researchers from the Centro de Estudios sobre América (CEA) did not participate, having been denied visas by the Department of State on the grounds that they were officials of the Cuban Communist Party. Although another group of academics from the island did receive visas to travel to Albuquerque, they declined to participate in the Congress in solidarity with colleagues who were denied.
between the United States and Cuba. Although implemented in the context of the global war against terrorism, the policy has not been justified on anti-terrorism grounds. Instead, it is part of a general tightening of U.S. sanctions against Cuba, the Cold War-era policy that has failed for more than forty years to achieve its objective, the overthrow of the Cuban political regime. Ironically, the new restrictions on academic and educational exchange are being implemented in the name of promoting democracy.

This report synthesizes the findings of a bi-national working group on academic exchange between Cuba and the United States, established in 2003 and funded by the Ford Foundation. The report provides a brief history of academic exchange between Cuba and the United States, including the legal restrictions imposed by the United States; analyzes the Bush Administration’s policy, its context, and its implications; and provides recommendations for restoring the respect for freedom of thought, expression and association that should characterize U.S.-Cuba academic relations.

The history of U.S.-Cuba academic and scientific exchange

Scientific collaboration and academic relations between Cuba and the United States have their antecedents early in the nineteenth century. Initially the result of increased travel and expanding commercial ties between Cuba and the United States, contact between the scientific communities of both countries soon acquired an internal logic of its own and developed in response to the specific needs of interested scholars and scientists. Collaboration between Cubans and Americans in such fields as archaeology, meteorology, botany, zoology, and medicine expanded throughout the first half of the twentieth century, establishing the basis for fruitful collaboration among scholars and scientists from both countries.

Cubans and North Americans participated in each other’s professional meetings, shared membership in many of the same professional organizations, published in each other’s professional journals, and generally contributed to each other’s knowledge of the world. Three generations of Cubans studied in the United States in such varied fields as medicine, dentistry, engineering, business and finance, and agronomy, thereby forging the professional basis that sustained collaboration for nearly a century. Vast numbers of North American scientists conducted field research in Cuba, including archaeologists, botanists, and meteorologists, and in similar fashion established enduring scholarly relations with Cuban colleagues.

The impact of the Cuban revolution

The century-long tradition of scientific cooperation and professional collaboration was interrupted after the January 1959 Cuban revolution. In the context of the Cold War, United States officials interpreted the revolution as a threat, and initiated a multi-track strategy to overthrow the new government. In March 1960, President Dwight D. Eisenhower approved a plan of covert action and economic sabotage against Cuba. On October 19, 1960, the United States prohibited the sale of goods.
and technical data to Cuba. On January 3, 1961, the United States broke diplomatic relations with Cuba. On September 4, 1961, Congress enacted the Foreign Assistance Act of 1961, authorizing a total embargo on all trade between the two countries. Similar authority already existed under the Trading with the Enemy Act of 1917. On February 7, 1962, President John F. Kennedy prohibited all imports, and that same day the U.S. Treasury Department issued regulations implementing the import prohibition. In July 1963, Treasury replaced the import regulations with the Cuban Assets Control Regulations, putting in place the essential features of the sanctions policy by prohibiting banking transactions in U.S. dollars. The U.S. government has since pursued an aggressive unilateral economic sanctions policy.

From the beginning, U.S. efforts to isolate Cuba politically and economically included prohibiting U.S. citizens from traveling to Cuba. In January 1961, a few days after breaking diplomatic relations, the U.S. government declared travel by its citizens to Cuba to be contrary to the foreign policy and national security interests of the United States. U.S. passports were deemed invalid for such travel unless specifically endorsed by the State Department for that purpose. Endorsements were only available for those with established interests in Cuba, such as businessmen or journalists; tourism was explicitly precluded. The U.S. government relied on passport endorsements to regulate travel to Cuba through the mid-1970s, although its efforts to criminally prosecute those who traveled without an endorsement were rebuffed by the Supreme Court in 1967. Meanwhile, with or without an endorsed passport, academics, scholars and students who were U.S. citizens or under U.S. jurisdiction were subject to the provisions of the trade sanctions.

Control Regulations, putting in place the essential features of the sanctions policy by prohibiting banking transactions in U.S. dollars. The U.S. government has since pursued an aggressive unilateral economic sanctions policy.

The basic U.S. policy decisions made in the early 1960s—to break off diplomatic relations and impose economic sanctions on Cuba—have structured U.S.-Cuban relations since, although the bilateral relationship has experienced many ups and downs, including an important relaxation of tensions during the mid-1970s, and a marked deterioration of relations in the last five years. With few policy instruments at its disposal, one consistent indicator of the

---

11 The Trading with the Enemy Act of 1917, which empowers the president to prohibit financial transactions with designated countries, was amended in 1977 to make it applicable only during periods of armed conflict. But sanctions already in existence were exempted from the new requirement, so the amendment did not affect the sanctions against Cuba. See Alastair T. Iles and Morton H. Sklar, *The Right to Travel: An Essential Freedom for Scientists and Academics* (Washington, DC: American Association for the Advancement of Science [AAAS], Science and Human Rights Program, February 1996), 24.

12 The Cuban Assets Control Regulations were issued on July 8, 1963, pursuant to the Trading with the Enemy Act. For a detailed chronology of political and economic measures taken by the United States against Cuba from 1959 through 1992, see Michael Krinsky and David Golove, eds., *United States Economic Measures Against Cuba* (Northampton, MA: Aletheia Press, 1993), 107-127.


14 The case is *United States v. Laub*, 385 U.S. 475, January 10, 1967. The Court upheld a District Court ruling dismissing a criminal indictment against Levi Laub for organizing travel to Cuba for 58 U.S. citizens whose passports had not been endorsed. After the ruling, the State Department revoked Public Notice 179 and replaced it with a new notice stating that travel to, in or through Cuba would seriously impair the conduct of U.S. foreign affairs. According to Krinsky and Golove, similar notices were issued through 1976, again providing that U.S. passports were not valid for travel to Cuba unless specifically endorsed by the State Department.

15 The Supreme Court’s 1967 decision made it possible for citizens to travel to Cuba only as long as they did not violate Treasury’s prohibitions on financial transactions.
state of the relationship has been the extent to which the United States has sought to control citizen travel and engagement with the island, through enforcement of restrictions on travel, but also by reserving for itself the prerogative to judge the appropriateness of the reasons people seek to travel to Cuba. Since the end of the Cold War, the U.S. government has increasingly viewed travel from an instrumentalist perspective, as a means to further the overthrow of the Cuban regime. The inevitable result has been the politicization of travel and visa policy, with the attendant government intrusion on freedom of thought and association.

Against this practice, scholars and analysts in Cuba and the United States have consistently sought to assert their rights to speak to, learn from and work with their counterparts on the other side of the Florida straits. Academic exchange and intellectual engagement continued after the revolution and expanded in the 1970s, then faced renewed obstacles in the 1980s. In the 1990s, U.S. government efforts to turn academic relations into a foreign policy tool failed miserably, even as exchange programs expanded dramatically. Universities and colleges from throughout the United States established programs with Cuba at the undergraduate and graduate levels, in the social sciences and the natural sciences, emphasizing both teaching and research. Individual and institutional collaborations persevered notwithstanding the complexities of the political context that characterized that historical moment, producing joint publications, joint panels at scholarly meetings, new curricula, the exchange of resources and research materials, and mutual intellectual enrichment.

**The 1960s and 1970s**

While the rupture in relations in the early 1960s severely limited the number and breadth of academic exchanges, many researchers from both countries managed to maintain their connections, despite the obstacles. Even as political conflict between Havana and Washington acted to curtail, or in some instances suspend altogether, the possibilities for scholarly collaboration between the two countries, the very circumstances that contributed to the rupture also served to foster widespread interest in the north about Cuba, past and present. In contrast to the fields of knowledge that had previously served as the basis of Cuban-U.S. collaboration, principally in medicine, the natural sciences, and technology, after 1960 interest grew in the social sciences and humanities, including political science, history, economics, anthropology, sociology, literature, and the fine arts—what in the aggregate has become known as “Cuban studies.” As a result, the decade of the 1960s saw an increase in academic contacts focused specifically on the study of Cuba. By the early 1970s, a strong body of serious work on Cuba was beginning to be produced in U.S. universities and in centers that specialized in Latin American studies, including research by Cubans who had left the country due to the revolution. The interest was so strong that the U.S. Library of Congress organized a series of workshops on Cuban materials, supported by the Ford Foundation.

---

16 Eloise Linger, “Las ciencias sociales estadounidenses: beneficiarias de la Revolución Cubana,” in Rafael Hernández, ed., *Mirar el Niágara: Huellas culturales entre Cuba y Estados Unidos* (Havana: Centro de Investigación y Desarrollo de la Cultura Cubana Juan Marinello, 2000). Examples include works by Richard Fagen, Marvin Leiner, Maurice Zeitlin, C. Wright Mills, and Leo Huberman. The Cuban Resource Center, funded by Protestant and Catholic church groups, and the Center for Cuban Studies, both based in New York, were founded in the 1960s.

In Cuba, interest in the United States was also growing. In a context of continuing hostility between the two countries, studying the United States was both an intellectual and a political necessity. In 1972 a course on United States history was created in the Department of History of the University of Havana. A year later, a Study Group on the United States was established in the Humanities faculty.¹⁸

In the 1970s, complex political circumstances confronting the United States, and the failure of U.S. efforts to isolate Cuba, helped produce an environment more favorable to improved bilateral relations with the island, which came to be reflected primarily in the easing of restrictions on travel.¹⁹ In July 1974, the Nixon Administration significantly liberalized the sanctions regulations in ways that directly benefited the academic and intellectual communities. The Treasury Department authorized the provision of specific licenses—case-by-case exceptions to the prohibition on financial transactions—for the importation of Cuban publications, recordings and visual media by universities, libraries, and scientific institutions for research purposes, and for research travel to and within Cuba by U.S.-based scholars, although the licenses would be granted only if the applicant first obtained a passport endorsed by the State Department for travel to Cuba.²⁰

Restrictions were eased even more during the Carter Administration. On March 19, 1977, President Carter permitted the passport restrictions on travel to Cuba to lapse. Two days later the Treasury Department promulgated a general license—an exception from the sanctions regulations for a category of activity—allowing all economic transactions incident to travel to Cuba. These steps opened up travel to all U.S. citizens, in essence authorizing tourist travel to the island. In September 1977, the U.S. and Cuban governments opened interests sections in Havana and Washington. While falling far short of full diplomatic relations, the opening of the interests sections was a significant step towards a less typical bilateral relationship. A little more than a year later,²¹ Treasury further amended

---


¹⁹ The consolidation of the Cuban revolution, a certain openness in the global projection of the United States, reflected in an easing of tensions with the USSR and the normalization of relations with China, and the strong domestic pressure to end the war in Vietnam contributed to a relatively favorable atmosphere. This context allowed for the establishment of contacts between representatives of the Cuban government and U.S. figures open to improved relations with Cuba. For example, in July 1974, Frank Mankiewicz, former Peace Corps director for Latin America, and Saul Landau traveled to Cuba to interview Fidel Castro. In September 1974, Senators Jacob Javits (R-NY) and Claiborne Pell (D-RI) became the first members of Congress to visit the island since the breaking of relations in January 1961. Sen. George McGovern (D-SD) traveled to Cuba for the first time in May 1975. As recent scholarship has verified, these contacts took place alongside secret negotiations between U.S. and Cuban government officials on the possibilities for normalizing relations.

On July 29, 1975, the Organization of American States voted to rescind mandatory sanctions against Cuba, leaving each member state free to determine its diplomatic and trade relations with Cuba.

²⁰ Books, publications, films, phonograph records, tapes, photographs, microfilm, microfiche and posters could be imported by scholars, universities, and research and scientific institutions. News-gathering organizations and journalists were authorized to import newspapers, magazines, photographs, films, tapes and other news materials. Specific licenses for travel were also authorized for journalists and news correspondents. Cf. Krinsky and Golove, op.cit.

²¹ May 9, 1978.
**BOX 1 The Right to Travel**

The easing of travel restrictions affecting Cuba in the 1970s coincided with a broader reaction against Cold War practices that limited academic and scientific engagement between the Soviet bloc and the West. Internationally, 1975 saw the adoption of the Helsinki Accords, in which the United States and the USSR agreed to the principle that states must respect and further the free movement of people and information across international boundaries. In 1977 the U.S. Congress passed the McGovern amendment to the infamous McCarthy-era McCarran-Walter Act of the 1950s. The Act had given the executive branch broad discretionary authority to prevent individuals from entering the United States based on their political views or associations, and specifically authorized the exclusion of advocates of communism. The McGovern amendment sought to limit visa exclusions based on political association, as a response to legal challenges to the “ideological exclusion” of foreigners and to achieve compliance with the Helsinki Accords.

These developments were informed by the basic principle that people should have the widest possible freedom to move between their own nations and other countries. As formulated in a number of international human rights treaties, and incorporated into national constitutions and domestic law, the right to travel encompasses the right of individuals to leave countries, including their own, and is widely interpreted as linked to free speech and freedom of association protections. While countries have broad discretion under international law to decide who will be admitted to their territory, so that foreigners are not guaranteed entry into a country, the Universal Declaration on Human Rights, the International Convention on Civil and Political Rights, and American Convention on Human Rights are among the instruments that specifically preclude discrimination on the grounds of political belief or association. According to the American Association for the Advancement of Science, under international law, "the power of nation[s] to exclude aliens seeking to enter their territory on a temporary (visitor) basis...must be exercised reasonably, without discrimination, and without arbitrariness. Under the non-discrimination standard, governments must ensure that their laws, regulations and administrative practices do not use race, sex, religion, nationality, color, political beliefs or other invidious classifications as a basis for denying entry."
its regulations to permit travel-related transactions by Cubans present in the United States on a visa issued by the State Department.

These policy decisions greatly facilitated academic exchange between Cuba and the United States. The growing interest on both sides of the Florida straits had produced a critical mass of scholars in the two countries who were ready for direct engagement with their counterparts.26 An April 1977 trip to Cuba by Senators George McGovern (D-SD) and James Abourezk (D-SD) included a meeting with Cuban academics studying the United States, and helped spur a multiplicity of contacts between Cuban and U.S. academics. In October of that year, Cuban scholars participated for the first time in a Latin American Studies Association International Congress (the VII, held in Houston, Texas). By 1979 a formal exchange program had been established between the University of Havana and the Johns Hopkins School for Advanced International Studies. The Ford Foundation provided funding for these initiatives, and many other early exchanges.

**The 1980s and 1990s**

The improvement in U.S.-Cuban relations in the 1970s, and the related easing of travel restrictions, proved to be short-lived. With the election of Ronald Reagan (1980-1988), U.S. foreign policy toward Latin America quickly became subject to the administration’s goal of reasserting official business; persons traveling to gather news, make documentary films, or engage in professional research or other similar activities; and persons traveling to visit close relatives in Cuba. Modifications to the new regulations in July 1982 limited the exception for professional researchers to full-time researchers investigating topics specifically related to Cuba, and who were likely to disseminate the product of their work. The requirement that the State Department separately endorse an individual’s passport for travel to Cuba was not reinstated, and the July modifications explicitly recognized that “fully-hosted” travel—travel paid for by the Cuban government or another entity not under U.S. jurisdiction—was not prohibited. These steps, combined with the general licenses for journalists and professional researchers, gave weight to the U.S. government’s

---

26 A first, formally organized and institutionally sponsored meeting took place in December 1973, when the Center for Cuban Studies organized a trip to the University of Havana to present seminars on U.S. history, politics, and economics, and research methodology. Cf. Margaret Crahan, “U.S.-Cuban Scholarly Exchanges: The Early History,” Cuba Exchange Program, Johns Hopkins University, 1998.

27 For one account of the significance for Latin America of the changing “lenses” through which different U.S. presidents have viewed Latin America, see Robert Pastor, _Exiting the Whirlpool: U.S. Foreign Policy Toward Latin America and the Caribbean_, 2nd ed. (Boulder, CO: Westview Press, 2001). The Cold War dominated the foreign policy concerns of every president elected after World War II until the 1990s, but the degree to which the Latin American region was viewed solely through a Cold War lens varied. The contrast was especially evident between Jimmy Carter and Ronald Reagan.
arguments, upheld by the Supreme Court in 1984,28 that travel restrictions did not seek to curtail the freedom of travel of U.S. citizens for political reasons, but were a foreign policy measure designed to deny hard currency to an enemy government.

Alongside the existing sanctions regulations, the Reagan Administration adopted a clearly political approach to the granting of visas to Cuban citizens seeking to travel to the United States. On October 4, 1985, Reagan issued Proclamation 5377, restricting the entry into the United States of officers or employees of the government of Cuba or the Communist Party of Cuba.29 Since all education and research institutions in Cuba were state entities, as are many such institutions in the U.S. and most in the countries of Western Europe, the proclamation meant that any scholar or scientist could be denied entry simply by virtue of the fact that his or her employer was the Cuban state. That same year, visas were denied for all the Cuban scholars from the Centro de Estudios sobre América (CEA) who had been accepted to participate in the XII LASA congress in Albuquerque, New Mexico.

The visa policy was not absolute; State Department officials retained discretion in determining whether or not to deny entry. So, for example, concerted advocacy by the U.S. academic community resulted in the approval of visas for Cuban academics and intellectuals scheduled to attend the XIV LASA congress, held in New Orleans in 1988. But opposition to the policy and the uncertainty it created led the academic community to hold international meetings to which Cubans were invited in third countries, in particular Mexico and Canada.30

Interestingly, given Reagan’s anti-communist agenda, the net effect of the changes in regulations and visa policy during the Reagan years on U.S.-Cuban academic exchange and engagement was mixed. Certainly in comparison to the Carter years, obstacles were greater. But the 1980s also saw the continued growth of academic interest in Cuba, involving North American and European scholars as well as Cuban émigrés, and the establishment of new centers of Cuban studies with a range of political orientations.31 At the New Orleans LASA meeting, a set of bi-national working groups was created to sustain research collaboration between the LASA congresses, held only every 18 months.

29 Visa denials based on this provision fall under section 212(f) of the Immigration and Nationality Act of 1952, as amended [8 U.S.C. 1182(f)], which authorizes the president to deny entry to “any class of aliens into the United States [that] would be detrimental to the interests of the United States.” Cf. Ronald Reagan, “Proclamation 5377 of October 4, 1985, Suspension of Entry as Nonimmigrants by Officers or Employees of the Government of Cuba or the Communist Party of Cuba.”
30 These meetings included several organized in Mexico by Johns Hopkins School of Advanced International Studies (SAIS) and the Center for the Study of the United States (CUSEU) of the University of Havana, and a major conference on Cuba held in Halifax in November 1989. See Jane Franklin, Cuba and the United States: A Chronological History (Ocean Press, 1997).
31 Valdés op.cit, describes the emerging competition during the 1980s and early 1990s among the Center for Latin American Studies at the University of Pittsburgh, the first leading center for Cuban studies that sought to undertake “impartial” analysis, the Cuba Program at Johns Hopkins University, perceived as liberal, and the Cuba Program at the University of Miami, established with the support of the Reagan Administration.
From the Reagan Administration forward, the debate over restrictions on travel to Cuba has played out through the easing or tightening of licensing requirements, and the greater or lesser use of political criteria in the granting of visas. On the licensing side, the list of categories of travel for which general licenses exist, and the definition of what is encompassed by each category, have expanded and contracted, as has the list of activities for which specific, or case-by-case, licenses may be granted. Modifications to the licensing requirements have reflected changing administration policies and/or have been prompted by congressional action. Since the late 1980s the Congress has played an increasingly central role in determining policy toward Cuba through legislation.

Several legislative initiatives have refined the sanctions and shaped U.S.-Cuban relations since the late 1980s. One of these, of direct importance for intellectual engagement, was the successful effort to exempt informational materials from the trade sanctions. Under the new administration of George H.W. Bush (1988-1992), Treasury issued regulations that interpreted the exemption narrowly, allowing only tangible items already in existence to be traded. A U.S. party could not finance the creation of new informational work, and electronic transmissions and works of art were excluded from the protection of the amendment. Treasury also took the position that teaching or lecturing in Cuba constituted the provision of a service with economic value, not information, and so violated the sanctions.

The George H.W. Bush Administration’s effort to limit the reach of the amendment prompted lawsuits and further efforts in the Congress. In 1991 Treasury agreed to lift sanctions on Cuban paintings, drawings and sculptures in order to settle a lawsuit that claimed that art was protected by the Berman amendment. In 1994, President Bill Clinton signed the Free Trade in Ideas Act of 1994, removing the president’s authority under the Trading with the Enemy Act to regulate transactions in information and informational materials, regardless of format or medium of transmission.

---

32 The Berman Amendment to the Omnibus Trade and Competitiveness Act of 1988 explicitly exempted publications, films, posters, phonograph records, photographs, microfilms, microfiche, tapes or other informational materials from the sanction regulations, while also instructing the administration to submit recommendations to Congress for enhancing enforcement of the embargo against Cuban-origin imports. Cf. Krinsky and Golove op.cit. The text of the amendment is found in § 2502(a) of P.L. 100-418, 102 Stat. 1107 (1988).

33 Treasury’s Office of Foreign Assets Control (OFAC) took this position in February 1989. In September 1991, the regulations were amended to specify that the provision of services was a prohibited transaction. Cf. Krinsky and Golove, ibid.

34 56 FR 13284, April 1, 1991.

The effort to exclude informational materials from sanctions unfolded as the Cold War was concluding. The dramatic dissolution of the Soviet Union in 1991 ended more than four decades of superpower competition and undermined the strategic rationale for many existing alliances around the globe. Without the USSR, Cuba was also no longer a threat to U.S. national security, and some sectors of the American political establishment expected that U.S.-Cuban relations would quickly move towards normalization. But an increasingly powerful movement of anti-Castro Cuban Americans, effectively represented in the U.S. House of Representatives, saw instead an opportunity to force a change of political regime in Cuba. Rather than ease the U.S. sanctions, this influential sector of the Cuban-American community argued for tightening it, on the premise that increasing economic pressure would force a transition to representative political democracy in Cuba. Between 1989 and 1992, the Bush Administration fashioned a new rationale for the sanctions policy that did not reference national security concerns. In April 1992 the Assistant Secretary for Inter-American Affairs, Robert Gelbard, provided a clear, simple statement of the new rationale for the Congress:

"The United States has followed a policy of isolating Cuba diplomatically and economically for three decades. We continue that policy today, in an effort to encourage a change to a democratic government in Cuba. To do otherwise would only bolster the regime's repression at home and delay democratic reform."  

While the goals of undermining the Cuban economic and political system, and promoting U.S.-style market democracy in Cuba, were not controversial among U.S. policy-makers, especially given the political transformations that were underway in the European eastern bloc, maintaining sanctions for that purpose was. The debate played out during consideration of a second key congressional initiative, a bill entitled “Cuban Democracy Act of 1992,” introduced by Rep. Robert Torricelli (D-NJ) in February of that year. The passage of the Cuban Democracy Act (CDA) with significant bipartisan support, a major victory for the anti-Castro Cuban-American movement, owed much to election-year politics. The law was signed by President Bush on October 23, 1992, in Miami, in the final days of the re-election campaign he lost to Bill Clinton.

The CDA wrote into law the policy objective of seeking a transition to democracy, and specified two main strategies: the application of sanctions against the government of Fidel Castro; and “support for the Cuban people.” The former strengthened the policy of denying hard currency to the Cuban government, giving Treasury for the first time the authority to impose civil fines and order the

36 The key Cuban members of Congress were Ileana Ros-Lehtinen (R-FL), first elected in 1989, and Lincoln Diaz-Balart (R-FL) and Robert Menéndez (D-NJ), first elected in 1992. Robert Torricelli (D-NJ), member of the House from 1983 to 1997 and the Senate from 1997 to 2003, was not Cuban, but he received significant financial support from the strongly anti-Castro Cuban American National Foundation (CANF).
37 Statement of Robert S. Gelbard, Principal Deputy Assistant Secretary of State for Inter-American Affairs, before the Committee on Foreign Affairs of the House of Representatives, April 8, 1992. Reprinted in Krinsky and Golove, op.cit., 137-147.
38 The legislation is also known as the Torricelli Act.
39 Clinton, the candidate of the Democratic Party, outflanked Bush from the right by endorsing the legislation during a campaign stop in Miami organized by CANF on April 23, 1992. On October 27, 1992, a few days after the CDA was signed by President Bush, Jorge MÁs Canosa, head of CANF, praised Clinton for his commitment to the legislation.
40 P.L. 102-484, Sec. 1703.
forfeiture of property for violation of the sanctions regulations. The latter had three components: (1) donations of food and exports of medicines and medical supplies; (2) a significant easing of sanctions with regard to telecommunications services and reinstatement of direct mail service to Cuba; and (3) the provision of assistance, through non-governmental organizations, for the support of individuals and organizations to promote non-violent democratic change in Cuba. These measures, designed to reach out to and materially benefit the Cuban people while by-passing the government, provided the legal basis for what would later come to be known as “Track II.”

As implemented by the administration of Bill Clinton (1992-2000), the CDA had a contradictory impact on U.S.-Cuban academic and intellectual engagement. On the one hand, a newly broadened range of activities was exempted by law from the sanctions, including news gathering, research, the export, import or transmission of information or informational materials, educational and religious activities, and the activities of human rights organizations. On the other hand, the definition of what was encompassed under each category was still subject to Treasury regulation, and the exemptions were made with the express purpose of transforming the Cuban political regime. As a result, such activities became subject to a new level of scrutiny by Cuban government officials.

In the early 1990s, as Cuba reacted to the transformations in the Soviet bloc, U.S. researchers and academic institutions seeking to engage the island were welcomed, and a few U.S. foundations began exploring ways to support post-Cold War collaborative projects. Alongside the Ford Foundation, which had long supported academic engagement, the John D. and Catherine T. MacArthur Foundation approved a small grant-making initiative in December 1991, intended to encourage public debate on U.S. policy toward Cuba and improve mutual understanding between the two countries. The foundation chose to focus its efforts on supporting academic exchange, in part due to its experience in fostering engagement between the United States and Soviet intellectual and scientific communities during the 1980s, and in order to take full advantage of existing opportunities under the sanctions regulations. Between 1991 and 1998, MacArthur made about forty grants to universities or academic institutions for research and training projects involving Cuban scholars and analysts. Many of the institutions involved were new to Cuba; the foundation sought to seed new engagement, rather than fund existing programs. Additional grants supported exchanges, delegations, policy research and media projects undertaken by non-governmental organizations, generally with the participation of Cubans on the island.

Other foundations, especially Arca, General Service, and Christopher Reynolds, supported collaborations between U.S. and Cuban scholars on specific topics, in particular the history of the Cold War.

41 Ibid., Sec. 1705.
42 Ibid., Sec. 1710.
44 For example, new programs were supported at the University of Chicago, University of Texas, Georgetown University, University of California—San Diego, University of Florida, Notre Dame, the American Council of Learned Societies, and Academic and Professional Programs for the Americas, LASPAU.
45 Several major research projects on key events in U.S.-Cuban relations during the Cold War were carried out during the last fifteen years. Working off of declassified or otherwise newly available government documents, U.S., Cuban and Russian academics participated in structured conferences alongside former key decision-makers from the countries’ foreign policy, security and military establishments. The projects led to many significant revisions of historical understanding of the dynamics of Cuba’s role in the Cold War. The conferences included several on the 1962 Missile Crisis, or Crisis de octubre (Moscow, January 1989; Antigua, January 1999; Havana, January 1992; Havana, October 2002), two on the Bay of Pigs (Georgia, April 1996, and Havana, March 2001), and an exploratory conference on Cuba’s role in Africa. The National Security Archive and the Thomas J. Watson Institute for International Studies at Brown University were the major institutional partners in the United States. In Cuba, the leading organizations were the Centro de Estudios sobre América (CEA), Instituto Superior de Relaciones Internacionales (ISRI), Centro de Estudios sobre los Estados Unidos (CESEU) and Centro de Estudios sobre Asuntos de Seguridad Nacional (CEASEN).
The Christopher Reynolds Foundation took the lead in establishing the ACLS/SSRC Working Group on Cuba in 1996. The Working Group, composed of an equal number of scholars from Cuba and from North America, managed a semi-annual grants competition that focused on preserving Cuban archives and facilitating engagement in the hard sciences.

But in the mid-1990s, even as interest in Cuba exploded in the United States, the politicization of civil society engagement implicit in the CDA grew into a major obstacle for U.S.-Cuban academic collaborations. In response to a migration crisis in August 1994, the Clinton Administration tightened unilateral economic sanctions to further limit the ability of the Cuban government to accumulate foreign exchange. The general license for professional research and similar activities established under Reagan was revoked, reverting to the Nixon-era requirement that U.S.-based researchers obtain specific licenses on a case-by-case basis.

At the same time, the definition of “similar activities” was revised to explicitly include attendance by professionals with an established interest in Cuba at professional meetings held on the island, and travel by graduate students whose research specifically related to Cuba. These changes were presented to critics as an expansion of allowable travel. Indeed, student travel had not been allowed since the Carter era, and participation in conferences had largely been limited to those fully hosted by the Cuban government. But by requiring specific licenses, the Clinton Administration reserved for itself the substantive authority to decide what constituted acceptable research, and which conferences merited attendance. Given the stated objectives of U.S. policy, Cuban officials became more likely to question the motives of those U.S. scholars or analysts who were granted specific licenses.

Then in the fall of 1995, the Clinton Administration formally announced its “Track II” policy, and Treasury issued new regulations greatly expanding the categories of activities for which specific licenses could be issued. The definition of professional research was extended to include research by organizations with an established interest in international relations, such as foundations. A new section on educational activities allowed travel to attend meetings of international organizations in Cuba, if those attending had an established interest in Cuba, and research on Cuba would be shared at the meeting. For the first time, undergraduate travel to Cuba could be licensed if sponsored by a U.S. college or university. A new section authorized a variety of educational exchanges: Cuban faculty could teach in the United States and vice versa; and U.S. graduate and undergraduate students could study in Cuban academic institutions. Travel by university personnel to organize exchanges could also be licensed. In principle, then, the regulations dramatically expanded the opportunities for U.S.-Cuban academic engagement.

---

46 In August 1994, in the context of the Cuban Adjustment Act of 1966, continued U.S. sanctions, deteriorating economic conditions on the island, and a relaxation of border controls by Cuban authorities, more than 30,000 Cuban citizens sought to emigrate illegally to the United States in what became known at the “rafters’ crisis.” The crisis led to a new immigration accord between the United States and Cuba which sought to ensure that no fewer than 20,000 U.S. immigration visas per year would be granted to Cubans who apply through legal channels.

However, in justifying the regulatory changes to its domestic opponents (including hard-line sectors of the Cuban-American community), the administration was explicit in linking such “civil society” activities to regime change in Cuba, reinforcing the perception among Cuban academics and authorities that this policy was another variant of traditional attempts to subvert the Cuban government.\textsuperscript{48} While not all projects in the 1990s pursued subversion, the requirement for case-by-case approval fed the suspicion that only those educational activities that shared the administration’s political objectives would be licensed. The linkage of civil society with subversion provoked a strongly defensive reaction by Cuban leaders, who sought to neutralize U.S. policy by increasing control over academic and non-governmental activities. Proposals for academic collaboration coming from the United States began to be received with greater caution. Scholars and researchers in both countries found they had to defend themselves against those who sought to use them as tools of foreign policy, or portrayed their work as inspired by political motives.\textsuperscript{49}

At the beginning of 1996, the bilateral relationship worsened with the downing in February of two U.S. based civilian aircraft belonging to an exile organization accused by the Cuban government of carrying out terrorist activities and violating Cuban air space.\textsuperscript{50} In the political climate following the incident, congressional approval of the Cuban Liberty and Democratic Solidarity Act, better known as the Helms-Burton Act, was assured.\textsuperscript{51}

Like the CDA, Helms-Burton made regime change an explicit objective of U.S. law and policy toward Cuba.\textsuperscript{52} But the new legislation went much further than the CDA. Sanctions as they existed on March 1, 1996, were codified into law; and the president’s authority to ease sanctions in the future—but not to tighten them—was

\textsuperscript{48} See, for example, Richard Nuccio, “Promoting civic culture and support for the Cuban people,” remarks at the conference The United States and Civil Society in Cuba: A Discussion with the NGO Community, Washington DC, December 1995.

\textsuperscript{49} As early as July 1993, Cuban scholars began to warn U.S. foundation officials that the CDA was provoking concern and would necessarily lead the government to increase scrutiny of projects that entailed collaboration with U.S. counterparts.

\textsuperscript{50} On February 24, 1996, the Cuban Air Force shot down two planes belonging to the Miami-based exile organization Brothers to the Rescue. A third plane escaped. According to a June 1996 report by the International Civil Aviation Organization (ICAO), the planes had penetrated Cuban airspace. The incident caused enormous controversy because Miami-based news media and anti-Cuban government personalities claimed the planes were engaged in humanitarian activities, and there was disagreement as to whether they were in Cuban or international airspace at the time they were shot down. But Cuban authorities viewed the planes as a security threat and they had certainly transgressed Cuban, U.S., and international civil aviation regulations about flight procedures. Brothers to the Rescue had violated Cuban air space before and carried out provocative acts over the city of Havana; the Cuban government had repeatedly warned U.S. officials to act to prevent the incursions. The Clinton Administration, on its part, had requested the U.S. Federal Aviation Administration to ground Brothers to the Rescue for their continuous violations of its regulations and advised the Cuban government that strict measures would be taken to stop these provocative flights.

\textsuperscript{51} P.L. 104-114, approved on March 1, 1996, and signed March 12, 1996.

\textsuperscript{52} Cf. Sec. 3. The purposes of the Act include “(1) to assist the Cuban people in regaining their freedom and prosperity, as well as in joining the community of democratic countries…(4) to encourage the holding of free and fair democratic elections in Cuba…(5) to provide a policy framework for United States support to the Cuban people in response to the formation of a transition government or a democratically elected government in Cuba….”

\textsuperscript{53} Sec. 4 (7) defines the sanctions as consisting of all restrictions on trade, transactions or travel involving Cuba, as per specified sections of the Foreign Assistance Act of 1961, the Trading with the Enemy Act, the Cuban Democracy Act and the Food Security Act of 1985. The accompanying conference report no. 104-468 explains that “[i]t is the intent of the committee of conference that all economic sanctions in force on March 1, 1996, shall remain in effect until they are either suspended or terminated pursuant to the authorities provided in section 204 of this Act (requiring a presidential determination that a democratic transition is under way in Cuba). It is not the intent of this section to prohibit executive branch agencies from amending existing regulations to tighten economic sanctions on Cuba or to implement the provision of this Act.”
Helms-Burton went so far as to define what would constitute democracy in Cuba, require the dissolution of Cuban security agencies, mandate the adoption of a market economy, and preclude the provision of assistance to any transition government involving the participation of Fidel or Raúl Castro. The legislation also instructed the president to oppose reinstatement of Cuba's membership in international financial institutions and the Organization of American States; to sanction countries of the former eastern bloc that maintained a military or intelligence presence in Cuba or engaged in non-market-based trade with Cuba, and any countries that provided support for Cuba's nuclear energy program; and established new extra-territorial mechanisms intended to force Cuba to settle claims against nationalized property on U.S. terms. Finally, the legislation ordered the president to develop a comprehensive plan for the provision of foreign assistance to a transition government in Cuba, and to communicate this plan to the Cuban people, while authorizing the establishment of U.S. news bureaus in Cuba, and Cuban news bureaus in the United States. The United States had not adopted such interventionist legislation towards Cuba since the days of the Platt Amendment.  

Helms-Burton did not result in any immediate changes to U.S. economic measures as these affected scholarly relations. Rather, the impact was political. In March 1996, during the Fifth Plenary of the Central Committee of the Cuban Communist Party, Minister of Defense Raúl Castro delivered a stinging critique of Helms-Burton, described Track II as “internal subversion,” and called into question the work and priorities of several Cuban research institutes that had been at the forefront of international academic engagement, including the Centro de Estudios sobre América and Centro de Estudios Europeos, both dependencies of the Party.  

Research agendas were revised, new approval procedures were put in place for collaborations with U.S. entities, exit permits for scholars—especially for travel to the United States—became more difficult to obtain, and the pace of work on existing collaborative projects slowed. The net result in Cuba was that administrators became more involved in the process of determining the level of the exchanges, although the initiative remained to a large extent with the researchers themselves. The chilling effect was noteworthy, and lasted for some time, until confidence was gradually reestablished.

54 The Platt Amendment was a rider appended to the U.S. Army appropriations bill in March 1901 that stipulated the conditions for the withdrawal of United States troops remaining in Cuba after the Spanish-American War, and defined the terms of Cuban-U.S. relations until 1934. Formulated by the U.S. Secretary of War Elihu Root, the amendment was presented to the Senate by, and named for, Connecticut Republican Senator Orville Platt (1827-1905). The amendment ceded to the United States the naval base in Cuba (Guantánamo Bay), stipulated that Cuba would not transfer Cuban land to any power other than the United States, mandated that Cuba would contract no foreign debt without guarantees that the interest could be served from ordinary revenues, ensured U.S. intervention in Cuban affairs when the United States deemed necessary, prohibited Cuba from negotiating treaties with any country other than the United States, and provided for a formal treaty detailing all the foregoing provisions. Later in 1901, under U.S. pressure, Cuba included the amendment's provisions in its constitution. From Wikipedia, the free encyclopedia, http://en.wikipedia.org/wiki/Platt_Amendment.


That confidence was re-established was due in large part to the persistence of scholars and academics in both countries, including Cuban-American scholars committed to engaging the island.\(^\text{57}\) The value of collaboration was revealed as Cuban scholars and administrators worked to reassure political authorities in that country, and U.S. scholars, administrators, and funders maintained contact, extended collaboration accords and grant contracts, and pressed U.S. officials to recognize the counter-productive consequences of Track II.\(^\text{58}\) There were Cuban scholars and administrators that insisted that the country was ready to overcome the challenge of Track II and even proposed a Track III policy to counter Track II by increasing contacts. In the long run this approach was adopted, although not publicly recognized.

The success of the confidence-building became evident in 1999, when the Clinton Administration announced, a year after the visit of Pope John Paul II to Cuba, that it was taking additional steps to strengthen independent civil society, and revised the sanctions regulations accordingly.\(^\text{59}\) The new regulations reinstated the general license for professional research; reiterated with greater precision the wide range of educational activities allowed since 1995; extended the length of specific licenses to two years; and added a new category of allowable activity, “people-to-people” exchanges—educational exchanges not involving academic study. These last were a direct reflection of the intent to foster an independent civil society. As part of the effort to encourage people-to-people exchanges, Clinton also exempted broad categories of Cubans from the application of Proclamation 5377, the Reagan-era provision ratified in Helms-Burton that allowed members of Cuban government officials or members of the Communist Party to be denied visas for entry to the United States.

Yet the new regulations did not provoke a renewed crisis for counterpart institutions in Cuba. Instead, there was a steady and significant expansion in the number of U.S. students participating in study abroad programs in Cuba, from fewer than 500 during the 1998-99 academic year to more than 2,500 in 2002-2003.\(^\text{60}\) The expansion was aided by the creation in 2000 of semester programs that allowed undergraduate students from U.S. universities to enroll in University of Havana courses and earn academic credit toward their degrees. By the end of the 1990s, the number of U.S. institutions involved in academic collaborations with Cuba had increased dramatically,\(^\text{61}\) as had the counterpart organizations in Cuba.\(^\text{62}\) While many collaborative projects focused on aspects of the Cuban experience, a growing number addressed thematic issues of shared

---

\(^{57}\) Among the most active were Lisandro Pérez of the Institute of Cuban Studies at Florida International University, Iraida López of the City University of New York, and Alejandro Portes of Johns Hopkins University.

\(^{58}\) For example, five U.S. foundations provided a number of recommendations to increase transparency and consistency in licensing decisions, reduce discriminatory treatment of Cuban nationals, restore the general license for professional researchers, and expand the range of activities allowable under specific license. Letter to the Honorable James Dobbins, Special Assistant to the President and Senior Director for Inter-American Affairs, National Security Council, February 12, 1999.

\(^{59}\) 64 FR 25808, May 13, 1999.


\(^{61}\) See Appendix 3.

\(^{62}\) See Appendix 5.
concern, such as health or environmental problems. While LASA remained a key forum for analysis and debate among Cuban and U.S. social scientists, many other U.S.-based professional associations, including several in the hard sciences, had engaged Cuba or had Cuban members. The SSRC/ACLS Working Group on Cuba demonstrated considerable success in expanding the number and range of collaborations in the natural and physical sciences, and for purposes of archival and museum preservation.

There was a steady expansion of U.S. students participating in study abroad programs in Cuba, from fewer than 500 during the 1998-99 academic year to more than 2,500 in 2002-2003.

The Bush Administration

George W. Bush assumed the presidency of the United States in January 2001, after losing the popular vote but prevailing, with the help of a sharply divided Supreme Court, in a bitter and extended dispute over the vote count in the state of Florida, which determined the allocation of Electoral College votes in his favor. At a minimum, Bush did not take office with a mandate. But the terrorist attacks on New York and Washington, D.C. on September 11, 2001, provided the second President Bush with the sense of purpose that had been lacking in the first months of the new administration. Since 9/11, the global war against terrorism, as expressed in the wars against Afghanistan and Iraq, has become the top U.S. foreign policy priority, U.S. national security doctrine has been radically transformed, and the institutions responsible for domestic and border security have been almost entirely restructured (see Box 2 on page 27).

Academic life in general has been affected by the focus on homeland security. The negative effects on research, freedoms of speech and association, and the flow of international scholars and students, have already begun to be documented. The impact of the USA Patriot Act on freedom of expression and civil liberties in the United States has attracted particular attention. A poll on the second anniversary of the September 11th attack revealed that 66 percent of the respondents were either "very concerned" or "somewhat concerned."
The Backdrop: New Institutions and Enhanced Powers for the Global War against Terrorism

President Bush created the **Office of Homeland Security** by Executive Order signed October 8, 2001. Governor Tom Ridge of Pennsylvania headed the new Office, but as “czar” he had neither the power nor the authority to implement the range of promised security measures—such as better screening at airports—without legislation.66

The **USA Patriot Act**67 was enacted in late October 2001 with overwhelming bipartisan support. The Patriot Act granted the government “broad new powers to investigate and detain potential terrorists,”68 changing some fifteen federal statutes. The expanded powers include new standards for gathering information with advanced technologies, fewer controls on how and why surveillance is undertaken, and stronger authority to prevent terrorists from entering or staying in the United States. Money laundering and computer hacking are targeted, and other activities newly defined as federal crimes. Patriot Act standards permit “sneak and peek searches,” done without informing anyone before, during, or after. Library and other third party records, email, and voice messages became subject to search under Section 215. “Gag order” standards ensure that surveillance remains secret. The precise numbers of interviews by law enforcement agents with those asked to report in the post-9/11 period (especially from 25 predominantly Muslim countries) are secret, and statistics on detentions, deportations, and criminal changes are difficult to access.

The **Department of Homeland Security** (DHS) was created in November 2002. Twenty-two federal agencies were combined into a new department with homeland security functions, a proposed start-up budget of $37.5 billion, and 160,000 employees (the only departments larger are Defense and Veterans Affairs).69 The CIA, NSA, FBI, and DIA are among the agencies with homeland security tasks that are not included in the new department. The Immigration and Naturalization Service was abolished, with part of it transferred to the Department of Homeland Security (as the Bureau of Citizenship and Immigration Services) and the other remaining in the Department of Justice. The Treasury Department gave the U.S. Customs Service over to DHS and two bureaus were created to enforce immigration and entry rules (Immigration and Customs Enforcement, and Customs and Border Protection).

The **Enhanced Border Security and Visa Entry Reform Act of 2002** tightened requirements and strengthened enforcement of entry procedures for foreign visitors. The Act authorized the new Student and Exchange Visitor Information System, or SEVIS, and directed the Secretary of State to implement enhanced security measures for review of visa applicants. The State Department must provide a Security Advisory Opinion on some visa requests, including those of citizens of countries on the list of

---continued on the following page---

---


67 *Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act, P.L. 107-56.* On March 9, 2006, Bush signed the USA Patriot Improvement and Reauthorization Act.


69 Ibid., 49.
state sponsors of terrorism. A Biometric Identification System (finger printing and
digital photographing) was also to be implemented in the 207 U.S. consulates by
October 2004, at a cost of more than $160 million.

Economic sanctions programs and export controls have become central to the
war against terrorism. Executive Order 13224 of September 24, 2001, froze
the assets of individuals and groups believed to be associated with international
terrorism. Financial crimes such as money laundering and “terrorist financing”
are the focus of more than 20 law enforcement and regulatory agencies. The
Commerce Department’s Bureau of Export Administration became the Bureau
of Industry and Security, “thereby emphasizing the bureau’s role in national
security.” The USA Patriot Act augmented the executive’s authority in the area
of economic sanctions.

The Office of Foreign Assets Control (OFAC) of the U.S. Department of Treasury
was considered for transfer to the Justice Department or DHS. Instead, on March
8, 2004, Treasury announced the augmenting of its investigative capabilities
with regard to financial crimes through the creation of the Office of Terrorism
and Financial Intelligence (TFI), composed of the Office of Intelligence and
Analysis (OIA) and the Office of Terrorist Financing and Financial Crimes
(TFFC). The TFFC supervises the Financial Crimes Enforcement Network
(FinCEN), the Treasury Executive Office for Asset Forfeiture, and OFAC, which
had previously reported to the Treasury Department’s undersecretary for
enforcement. Oversight of OFAC thus passed to Juan Carlos Zarate, Assistant
Secretary of TFFC, one of the more than a dozen high-level officials of Cuban

---

70 Specifically Designated Global Terrorists. John B. Reynolds III and John F. Papandrea, Jr., “Export Controls and
Economic Sanctions,” The International Lawyer 36:3 (October 2002). In late 2002, the Bush Administration
reported that 167 countries were cooperating in targeting terrorist assets, and more than $113 million had been
frozen. John B. Reynolds III, Michael D. Sherman, C. Ray Gold, John F. Papandrea, Jr., and James E. Prince,

71 Reynolds, et al., ibid., 1.

72 Zarate was born in California of a Cuban mother and Mexican father. Other officials include Otto Reich (State
Department), Adolfo Franco (USAID), Emilio Gonzalez (National Security Council and in December 2005, Director
of U.S. Citizenship and Immigration Services in Department of Homeland Security), Mauricio Tamargo (Chair of the
Foreign Claims Settlement Commission) and Mel Martinez (Housing and Urban Development). The second Bush
Administration has also placed Cuban Americans in high-level official posts, including Carlos Gutierrez, Secretary
of Commerce. Cf. Larry Luxner, “Treasury Announces Cuba Crackdown; Opponents Smell Election-Year Politics,”
CubaNews (March 2004).
concerned” about the restriction of individual freedoms.\textsuperscript{73} Antiwar activities have been investigated and information has been requested from universities, though it has not always been provided. There were 34 “credible reports of violations” of civil rights and liberties by the Justice Department in 2003.\textsuperscript{74} On May 6, 2004, the Senate of the University of California, Berkeley, passed a resolution with a vote of 105-0 calling upon its administration to resist the Patriot Act’s ability to violate individual civil rights and liberties. A similar resolution was passed later that month by the faculty at University of California, Santa Cruz. In March 2006, the Bill of Rights Defense Committee (BORDC) listed more than 400 local, county, or state resolutions passed in favor of maintaining the civil liberties that are the hallmark of U.S. political culture.\textsuperscript{75}

Even before 9/11, the historic U.S. commitment to international student exchange had lessened. The end of the Cold War weakened the liberal political rationale for promoting academic exchange, and public funding for international exchange programs dropped notably during the 1990s. Since 9/11, greatly increased scrutiny of international travelers, including students and professors, has led to sharp declines in enrollments and visa applications by international students seeking to study in the United States (see Box 3 on page 30).

These developments raise serious questions about the effects of a foreign policy that would seem to isolate the United States, even as U.S. officials speak of the importance of winning the global “battle of ideas” against those who promote terrorism.\textsuperscript{76} In the case of Cuba, the overall deterioration in the climate for international academic engagement has interacted with an ever harsher U.S. policy towards the island to undermine the trend toward increased academic engagement at all levels. The sanctions regulations have been further tightened, while Cuba’s inclusion on the list of nations sponsoring terrorism before 9/11\textsuperscript{77} has been added to the administration’s rationale for its persistent efforts to undermine the regime, despite compelling evidence that it is not engaged in terrorism.\textsuperscript{78}

\textsuperscript{73} Kettl, op.cit., 104.
\textsuperscript{74} Ibid.
\textsuperscript{75} There were 277 efforts underway, see BORDC, Bill of Rights Defense Committee, “Resolutions Passed and Efforts Underway, by State,” http://bordc.org/list.php?sortAlpha=1.
The long history of interest and support for international education in the United States began after the Boxer Rebellion in China. Foreign students have been allowed to study in the United States since the Immigration Act of 1924. The Institute of International Education (IIE) was created in 1919, and the Belgian-American Educational Foundation in 1920. The National Association of Foreign Student Advisors was founded in 1948, changing its name in 1964 to National Association of Foreign Student Affairs, and then in 1990 to NAFSA: Association of International Educators. Senator J. William Fulbright’s amendment to the Surplus Property Act of 1944 directing proceeds from the sale of surplus war property toward academic exchanges with Lend Lease countries (signed into law in 1948) launched the prestigious Fulbright Program. The program was expanded to other countries with the 1948 Smith-Mundt Act, and the 1961 Mutual Educational and Cultural Exchange Act (Fulbright-Hays Act) formalized a structure that includes presidential appointment of its 12-member board.80

During the Cold War, U.S. policy-makers believed that international education served U.S. interests, and federal legislation expanded international exchanges as a matter of national policy. The International Education Act of 1966 increased federal support for international studies at home, and the National Security Education Act of 1991 (the Boren Act), with its National Security Education Program located in the Department of Defense, focused resources on study abroad by undergraduate and graduate students. Some 50,000 students, scholars, scientists, and sports and cultural figures from the Soviet Union visited the United States between 1958 and 1988, invited by exchange programs.81 The largest was IREX, International Research and Exchanges Board, created in 1968 by the American Council of Learned Societies and the Social Science Research Council. Between July 1968 and May 1992, more than 110 institutions of higher education participated.82 Political motivations also prompted curricular changes and their funding, including the National Defense Education Act (NDEA) in 1958 to support the teaching of math, science, and foreign languages, and Title VI encouragement of areas studies programs.

But political support for international academic exchange declined after the end of the Cold War. The State Department’s educational and cultural exchange budget dropped from $335 million in 1994 to $245 million in 2003, although it increased to $317 million in 2004.83 The Fulbright program also lost some 20 percent of its budget during the same period. A Carnegie study of the professoriate in 14 countries identified the United States as the only country without a commitment to internationalism in education.84

Greatly increased scrutiny of international travelers on security grounds since 9/11 has taken an additional toll. The new Student and Exchange Visitor Information System, or SEVIS, a tracking program under development prior to 9/11, was enacted in 2002 as part of the Enhanced Border Security and Visa Entry Reform Act. SEVIS set a target date of August 1, 2003, to register all new and continuing students and exchange visitors in its database. The Act also further limited access by foreign students and scholars to sensitive areas of research, and required male students between the age of 16 and 45 from 16 Muslim countries to report for processing.

80 Ibid.
82 Ibid., 21-22.
84 Philip G. Altbach and Patti McGill Peterson, “Internationalize American Higher Education? Not Exactly,” International Higher Education No. 11 (Spring 1998), www.bc.edu/bc_org/avp/soe/cihe/newsletter/iNews11/text8.html. They offer several possible explanations, including faulty self-perceptions, the structural conditions of higher education (U.S. faculty teach more and may have more pressures as they pursue tenure), and the lack of attention to foreign language and area studies in the curriculum.
The implementation of security measures coincided with a sharp drop in visa applications. The total number of visa applications declined 32 percent between 2001 and 2003 (and 46 percent in the Middle East); there was a backlog of 3.8 million visa applications in January 2004. The rate of refusal of student visas increased to 35 percent in 2003, compared to 20 percent in 1999. Although rejections of work applications by international students have not increased dramatically, the cases under review have.

Students in science and engineering may suffer most from delays. The special Visa Mantis system, created in 1998 for monitoring study in the 200 scientific fields deemed sensitive, requires a security check that may delay visa processing up to 12 weeks. After 9/11, Visa Mantis cases have increased near three-fold, and there are numerous cases of students being denied entry.

Visa delays led to reduced applications to universities and declining enrollments. Applications to take the Graduate Record Examination declined by 50 percent in China, 37 percent in India and 43 percent in Taiwan. Of 480 U.S. educational institutions surveyed in 2004, 38 percent reported declines in new undergraduate enrollments, 44 percent in continuing undergraduate enrollments, 48 percent in new graduate level enrollments, and 37 percent in continuing graduate students. There was a striking fall-off in international graduate student applications at the 19 universities that have traditionally had the highest foreign student numbers. Some countries have been affected more severely by the tighter entry requirements, including China and India; applications for graduate study from China dropped 76 percent and from India 58 percent for 2004, while the decline in enrollments in 2003-04 from China was 5 percent, from Japan 11 percent, and from Middle Eastern countries, 9 percent; there was a 7 percent increase in enrollments from India. Overall, the drop in international student enrollments in 2003-04 was 2.4 percent, the first absolute decline in more than 30 years.

Nor are U.S. students flocking abroad. While three times as many U.S. students studied abroad in 2001-02 (160,920) as in the mid 1980s, only slightly more than 1 percent of the eight million full-time and five million part-time undergraduate students at 3,400 accredited institutions of higher education actually went abroad. Between 2000-01 and 2003-04, when 191,321 students studied

—continued on the following page
abroad, there was a near 20 percent increase; 61 percent studied in Europe, however.\\(^{100}\)

Bush Administration attention to problems in visa processing, to the realities of international competition for students, and to internationalizing education at home is producing some change. In 2004-5, the decline in international student enrollment slowed to 1 percent, a State Department meeting with 120 college officials was held in Washington, D.C. in January 2006, and several initiatives are underway to strengthen international education, including critical-language training.\\(^{101}\) Arguments have been made in favor of a renewed national commitment to international education and the increased budget needed to realize that commitment.\\(^{102}\) But despite the fact that 2006 was named the Year of Study Abroad by Senate Resolution, international academic exchange is not likely to receive federal funding for the sake of universal knowledge,\\(^{103}\) and fear seems to be prevailing over the enlightened self-interest of the Cold War era. The National Commission on Terrorist Attacks upon the United States observed in its 2004 report that “targeting travel is at least as powerful a weapon against terrorists as targeting their money.”\\(^{104}\)


102 President Clinton issued an April 19, 2000, memorandum asking for a national policy on international education, following a NAFSA statement issued earlier that year. The Benjamin Gilman International Scholarship Program was created in 2001. In 2003 former Senator Paul Simon (D-IL) argued in favor of support for the education of five million Americans abroad in the next ten years, “making us more understanding of the rest of the world and less likely to commit international blunders, and creating a base of public opinion that would encourage responsible action rather than popular but unwise actions.” See “A Message from the Honorable Paul Simon, Honorary Co-Chair, Strategic Task Force on Education Abroad,” in NAFSA 2003, ibid.

103 Dubois, op.cit.

104 National Commission on Terrorist Attacks, op.cit., 385.
The Initiative for a New Cuba and the U.S. Commission for Assistance to a Free Cuba

On May 20, 2002, President Bush announced the Initiative for a New Cuba, described by the State Department as “an effort to bring Cuba into the Western Hemisphere’s community of democracies” and “the beginning of an ongoing, flexible, and responsive campaign designed to generate rapid and peaceful change within Cuba.” In keeping with the approach of the CDA and Helms-Burton, the Initiative seeks regime change, calling upon Cuba to undertake political and economic reforms, and to conduct free and fair elections, in exchange for which the U.S. government would ease the unilateral economic, commercial, and financial sanctions. In the meantime, new steps would be taken to allow U.S. organizations the Bush Administration considers “legitimate” to provide the Cuban people with humanitarian and other assistance. Perhaps the only innovation was the decision to be even more explicit regarding the goal of the policy and in identifying the actors in Cuba the U.S. government considered likely to contribute to undermining the Cuban regime, such as religious and non-governmental organizations, students and professionals trying to build independent civil institutions, and family members of political prisoners. Individuals in the latter two categories would be eligible for scholarships in the United States.

Ten months later, on March 24, 2003, the Treasury Department issued revised regulations to implement the Initiative. The new regulations eased the conditions under which Cuban Americans could travel to visit relatives in Cuba, eliminated the requirement that visits take place only in cases of “humanitarian need,” and broadened the definition of “close relative” to within three degrees of relationship. At the same time, the revised regulations narrowed the conditions for most others, and added language on humanitarian projects to explicitly endorse those with a political purpose in line with U.S. government policy towards Cuba.

The regulations expanded the range of allowable activities for organizations seeking to promote a transition to democracy in Cuba. This was viewed by many as explicitly increasing support for opposition groups. The “list of licensable humanitarian activities” was “enlarged to include construction projects intended to benefit legitimately independent civil society groups and formal (as well as non-formal) educational training within Cuba and elsewhere on topics including civic education, journalism, advocacy, and organizing.” Specific licenses, including licenses for multiple trips to Cuba, could be authorized for public performances, clinics, workshops or exhibitions, if the event would be open for attendance and participation by the Cuban public, and if all U.S. profits were donated to an independent non-governmental organization in Cuba or a U.S.-based charity. But the regulations limited the kind of workshops and clinics that U.S. citizens could be licensed to attend in Cuba, requiring that they be involved in organizing the clinics or workshops, rather than simply participating in them.

At the same time, the new regulations reduced the categories of permissible travel to Cuba and abolished the people-to-people category entirely, eliminating thereby non-credit people-to-people educational exchanges established in 1999 by the Clinton Administration. Such

106 Although the March 24, 2003, regulations were published as an “interim final rule,” they were effective immediately. Public comments were invited and the final regulations were issued on May 29.
108 68 FR 14143.
exchanges, which came to account for a significant share of travel, were criticized by some U.S. officials for being too much like tourism—one way of characterizing the fact that most of such exchange programs were designed to allow Americans to see Cuba on its own terms.109

The announcement of the March regulations coincided with the arrest and trial in Cuba of 75 people accused by the government of conspiring with the United States to subvert the Cuban regime. In a press conference on April 9, Cuban Foreign Minister Felipe Pérez Roque argued that Cuban dissidents were receiving U.S. funding disguised as family remittances or paid through a Canadian debit card system, and so were agents of a hostile foreign government.110 Supporters of sanctions welcomed the new regulations as a signal that the arrests would not dissuade the United States from continuing to actively support anti-Castro activities in Cuba.111

One other change in March 2003 was the addition of a new general license authorizing all transactions by Cuban nationals visiting the United States incident to the activities for which their visas were issued. This meant that if Cuban scholars or students received visas for a particular purpose, such as giving a lecture or taking a course in the United States, the ordinary costs of carrying out that activity, excluding salary or honoraria, could be paid without further review by Treasury.111

A few months later, with the 2004 presidential election contest on the horizon, the Bush Administration began to publicize more fully the scope of the new Initiative.

New regulations reduced the categories of permissible travel to Cuba and abolished the people-to-people category entirely.

Roque argued that Cuban dissidents were receiving U.S. funding disguised as family remittances or paid through a Canadian debit card system, and so were agents of a hostile foreign government.110 Supporters of sanctions welcomed the new regulations as a signal that the arrests would not dissuade the United States from continuing to actively support anti-Castro activities in Cuba.

In October 2003, Bush announced the creation of the Commission for Assistance to a Free Cuba—also known as the Powell Commission, co-chaired by Secretary of State Colin Powell and the Cuban-American Secretary of Housing and Urban Development Mel Martinez, and charged with preparing a study to recommend measures for hastening regime change on the island.112 In February 2004 in Miami, Secretary of the Treasury John W. Snow expressed his enthusiasm for the Initiative, and described stepped up efforts to enforce

---

109 Consider the following: “[OFAC], an arm of the Treasury Department, didn’t respond to requests for comment. Its defenders say it does an admirable job enforcing the four-decade-old Cuban trade embargo despite scarce resources and increasing demands. Americans’ ‘misperceptions’ about Cuba have complicated OFAC’s mission, agency director Richard Newcomb told a Senate subcommittee last year. Travel guides portray the island ‘as just another Caribbean tourist destination,’ he said. In reality, ‘travel for purposes of tourism or most business transactions remains strictly prohibited.’ Yet many people are indignant; they go to Cuba as ‘an act of civil disobedience’ and see travel restrictions as ‘an infringement of their constitutional rights,’” Mr. Newcomb said.” From the Dallas Morning News, March 2003, available at http://ciponline.org/cuba/travel/dmn032303eaton.htm.

110 “Conferencia de prensa de Felipe Pérez Roque, en relación con los mercenarios al servicio del imperio que fueron juzgados los días 3, 4, 5 y 7 de abril, La Habana, 9/04/2003.” http://www.cubaminrex.cu/Archivo/Canciller/discursos/felipe$202003

111 The regulations had permitted by general license authority, at least since the 1990s, the payment of airfare and other ordinary living expenses (hotel, meals, etc.) for authorized Cuban travelers. According to Debra Evenson, attorney with the firm of Rabinowitz, Boudin, Standard, Krinsky, and Lieberman, “the general license only applies to incidental expenses and not to stipends or salaries. Thus, a university that invites a Cuban scholar who travels to the United States on a visa may pay for books, living expenses, registration fees for a conference, etc. under this general license,” interview by Soraya Castro, November 3, 2005. However, the university would have to have a specific license under Section 515.565 in order to pay a stipend or salary for lectures given by a Cuban scholar in the United States.

the sanctions. “I look forward to that day of Cuban liberation,” he said, “and dedicate myself and my office to speeding its arrival.”

We must not and we cannot have American dollars lining Fidel Castro’s pockets and those who would perpetuate his oppressive regime...and enforcement actions by the Department of the Treasury, along with the Department of Homeland Security (DHS), are making sure that does not happen.\textsuperscript{113}

Snow noted that OFAC was working with Customs agents to inspect flights to Havana from New York, Los Angeles, and Miami, and had “provided on-site training...to over 500 DHS Customs inspectors.” The goal was “tightening the economic noose,” with hopes of increasing civil penalties. The Secretary reported that between October 20, 2003, and February, some 264 cases had been opened and three referred for criminal investigation, nearly 300 passengers had been denied travel, and the licenses of two humanitarian/religious organizations had been rescinded.\textsuperscript{114} Homeland Security scrutinized legal and licensed travelers; in the 30 days after Bush’s October 10, 2003, Cuba policy speech, 8,800 travelers on 144 flights to Havana were searched.\textsuperscript{115}

By early 2004, it also became evident that the Bush Administration was restricting visas for Cuban visitors on political grounds. Some delays and denials were due to new security measures. After 9/11, citizens of countries unilaterally identified by the U.S. State Department as sponsoring terrorism became subject to special visa procedures. The Enhanced Border Security and Visa Entry Reform Act of 2002 required a State Department Security Advisory Opinion, the processing of which resulted in lengthy delays—and de facto denials—of visa requests from Cuban academics, artists, and intellectuals.\textsuperscript{116} The required clearances may be neither waived nor expedited, and there are no guidelines to facilitate application. But in addition, the Bush Administration explicitly resuscitated Presidential Proclamation 5377. That Section 212(f) was being used officially to deny Cubans entry was confirmed by the formal letter explaining the denial of visas to Cubans invited to the February 2004 Grammy Awards.\textsuperscript{117}

On May 6, 2004, the Commission for Assistance to a Free Cuba presented its four-hundred-plus-page report to President Bush. The report was explicit in proclaiming its goal, to “help the Cuban people bring about an expeditious end to the Castro dictatorship” through “a more proactive, integrated, and disciplined approach to undermine the survival strategies of the Castro regime and contribute to conditions that will help the Cuban people hasten


\textsuperscript{114}Ibid.

\textsuperscript{115}Ned Sublette, “TheMissing Cuban Musicians” (Albuquerque, NM: Cuba Research and Analysis Group, June 24, 2004), 14.


\textsuperscript{117}See Sublette, op.cit. The political use of visa processes is also apparent in the interesting details of the recent defections of 50 of the 53 members of the Havana Night Club group who received visas for travel to the United States. See Elaine De Valle, David Ovalle, and Martin Merzer, “Well Orchestrated Plot to Allow/Encourage Cuban Dancers to Defect in Las Vegas,” Miami Herald, November 24, 2004, at http://havanajournal.com/politics_comments/2676_0_5_0_M23/.
the dictatorship’s end.”

But while the objective of forcing political change and repeated references to strengthening civil society suggested the continuation of the policies put in place by the CDA and Helms-Burton, the strategy laid out in the report marked a significant departure in several respects.

The Commission for Assistance to a Free Cuba’s report recommended rescinding the broad definition of “close relatives” put in place in March 2003 and dramatically restricting the frequency, length and allowable cost of Cuban-American family visits to the island. Other recommendations included sharply reducing allowable remittances and gift parcels of household items and medicines; scaling back educational travel; and eliminating the category of fully-hosted travel. This recommendation directly contravenes the right to travel because it de-links the prohibition on travel from the policy goal of denying hard currency to the Cuban government.

The 2004 recommendations increased the emphasis on limiting Cuba’s access to hard currency, while the elimination of cultural and other exchanges clearly reflected the Commission’s conclusion that the fostering of people-to-people contact had failed. The new emphasis also neglected humanitarian concerns while prioritizing support for dissidents within Cuba. This strategy reflected the influence of the most recalcitrant sector of the Cuban-American community, generally people who had migrated to the United States in the 1960s and had few, if any, family members remaining on the island. In the words of Lincoln Díaz-Balart, a leading advocate of the measures, “We recognize that many common Cubans will be severely affected, and especially the children, the elderly and the ill. But we, as members of the Cuban opposition, will try to care for those families as best we can.” Yet, millions are disbursed to U.S. universities and U.S.-based NGOs in line with administration goals.

In June 2004, the Treasury and Commerce Departments issued revised

---


119 The report urges improved “U.S. outreach” to youth, women, Afro-Cubans, political prisoners and their families, independent civil society groups, religious organizations and faith-based initiatives, and recommends that the U.S. government provide an additional $29 million in support for such groups.

120 The Inter-American Dialogue noted that the report’s detailed recommendations for Cuba’s future are “wrong in tone and substance, and more likely to do harm than good … and it is not respectful of the Cuban population.” Inter-American Dialogue, Cuba: Policy Brief; An Open Letter to Secretary of State Colin Powell Regarding the Commission for Assistance to a Free Cuba (Washington, DC: Inter-American Dialogue, September 2004).

121 The regulations implementing the recommendations limit family visits to Cuba to one (1) trip every three years under a specific license; individuals would be eligible to apply for a specific license three years after their last visit to Cuba; and new arrivals from Cuba would be eligible to apply for a specific license three years after leaving Cuba. The regulations also limit the definition of “family” for the purposes of family visits to immediate family (including grandparents, grandchildren, parents, siblings, spouses, and children); and reduce the authorized per diem for family travel in Cuba from $164 per day to $50 per day.

122 The elimination of fully-hosted travel was based not on its revenue benefit for Cuba, but on the claim that “a person who accepts goods or services in Cuba without paying for them is in fact engaging in a prohibited dealing in property in which Cuba or a Cuban national has an interest” (69 FR 33768). In other words, a fully-hosted traveler was trafficking in stolen property.

123 The Commission’s report criticizes more recent immigrants for seeking to help the families they left behind. “In effect, U.S. compliance with the Migration Accords has had the effect of facilitating the relocation of a significant Cuban population to the United States; it is this population that is the most active in traveling and sending remittances and gift parcels to the island. And it is this source of resources, on a net basis, which is by far the largest hard currency source for the Castro regime after tourism.” Commission for Assistance to a Free Cuba, op. cit., 34.


125 “Secretary Rice Appoints New Transition Coordinator for Cuba,” U.S. Department of State, Office of the Spokesman, July 28, 2005, http://usinfo.state.gov/wi/Archive/2005/Jul/28-883604.html. From 1996-2005, U.S. government funding (USAID) for organizations and initiatives dedicated to undermining the Cuban regime amounted to more than $34 million. Among the 28 universities and NGOs receiving money are the Center for a Free Cuba ($5,049,709), Grupo de Apoyo a la Disidencia ($4,650,000), Acción Democrática Cubana ($1,020,000), Freedom House ($2,100,000), and Plantados: Support for Prisoners ($400,000), Georgetown University ($400,000), University of Miami’s Cuba Transition Project ($2,045,000), and Florida International University’s Journalism Program ($1,164,000). See Ana Radelat, “US AID Budgeting for Anti-Castro Groups Tops $34 Million,” CubaNews, November 2004, p. 9, and US AID Budget, From the American People, http://www.usaid.gov/policy/budget/cbj2006/lac/cu.html.
On July 28, 2005, Secretary of State Condoleezza Rice, who now chairs the Commission for Assistance to a Free Cuba, announced the appointment of Caleb McCarry as the Cuba Transition Coordinator, noting that the Commission’s budget was $59 million—the amount recommended in the 2004 Report. The Commission was reconvened by Secretary Rice in 2006, and its report was accepted by President Bush in July 2006 (the report is found at http://www.cafc.gov/rpt/2006/).

The impact of Bush Administration policy on academic relations

The June 2004 regulations restricted academic exchange in a number of ways. Although full-time professionals may still travel under the general authority to conduct research in Cuba, and graduate students may conduct research under a specific license, high school students are no longer permitted to travel to Cuba. The two-year licensing of universities that send students and faculty to Cuba was reduced to one year; specific licenses for study abroad programs are authorized if programs are ten weeks or longer (shorter programs may be granted a license only if the program promotes the foreign policy interests of the United States); and students who travel must do so with their own university, eliminating consortia-sponsored travel and the work of study abroad businesses. In addition, the regulations explicitly preclude interpreting attendance at a conference in Cuba as research activity. The effect is to reinforce the limitations of the general license put in place in 1999, which permits attendance at professional meetings or conferences in Cuba only if these are organized by international entities not under U.S. jurisdiction. The policy of specifically licensing participation in workshops and clinics was eliminated.

The changes in the regulations since 2003 have been accompanied by stepped-up enforcement by the Treasury Department’s Office of Foreign Assets Control (OFAC), under pressure from some sectors of the Congress and the administration. In October 2003, the director of OFAC explicitly acknowledged the agency’s efforts to implement current foreign policy initiatives, both with respect to the President’s stated commitment to facilitate humanitarian aid to Cuba and in order to curb the abuse of licenses issued for travel related to non-accredited educational exchanges, where travelers primarily engage in tourist activities.

In response to the president’s priorities, OFAC made licenses for humanitarian aid and support for civil society that served the government’s policy of regime change in Cuba its priority, while seeking to limit the use of statutory categories of permissible

---

127 Commission for Assistance to a Free Cuba, op.cit, 26. The specific requirement to this effect was eliminated in the final regulations, but nothing has been issued that contravenes the intent expressed in the Commission report.
128 Ibid.
129 Ibid.
travel. In May 2004, there was widespread criticism of the priorities of OFAC following a report that Treasury had only four employees tracking the financial assets of Osama Bin Laden and Saddam Hussein, but more than five times that number working on the Cuba sanctions. In 2005, OFAC threatened a crack down on religious groups promoting licensed travel to Cuba, and warned them not to abuse their license by taking individuals not affiliated with the religious organizations. Press reports indicate that OFAC also limited the number of people who can travel under the auspices of these groups to 25 every three months. At the same time, the number of humanitarian, educational, and other licenses issued is unknown.

Academic exchange has been severely affected. As of October 2003, OFAC had issued 760 two-year specific licenses to accredited U.S. institutions of higher education. The efforts to deny renewal of licenses for educational institutions began in 2003, with OFAC surveying advertisements and critiquing the suspected shortcomings of programs in terms of contact with the Cuban people. A December 2004 NAFA survey found that 45 of the 61 institutions that responded had suspended their study abroad programs in Cuba after August 2004 because they did not meet the minimum ten-week length. Two cancelled prospective programs for 2004-05, and three cancelled semester programs because they enrolled students from other institutions. Four other responding universities had been affected by the new regulations but declined to be identified in the results. Only one university, SUNY Buffalo, reported that its program continued.

Cuban education administrators have also documented a dramatic decrease in academic exchange programs during the last two years. After increasing steadily since the 1999-2000 academic year to a peak of more than 2,500 in 2002-03, student participation in U.S. study programs in Cuba declined sharply to fewer than 1,000 in 2004-05. Enrollment in spring 2005 semester programs was only 5 percent of that of spring 2004. Butler University’s Institute for Study Abroad organized a semester program in the spring of 2004 that drew more than 70 students from 40 universities. By the fall of 2004 the program was unable to operate.
Alongside the regulations changes, the Bush Administration has continued its policy of denying visas to Cuban scholars and scientists. During the first ten months of 2004, only five professors from the University of Havana received visas allowing them to travel in response to invitations from U.S. institutions to give classes and lectures, or for research stays. Prior to 2004, an average of 25 members of the University’s faculty traveled each month to the U.S. From September 2004 until November 2005, eight (47 percent) of the 17 visa applications from the University of Havana were denied.

Perhaps the salient facet of this retrospective is the realization of the degree to which collaboration between Cuban and American scholars has developed in function of and dependent upon foundation support. In comparison to the 1990s, interest in Cuba among foundations in the United States has waned markedly, and accordingly financial support for scholarly collaboration has dwindled and in some instances vanished altogether. At the same time, the economic recession in the United States of recent years has impaired the ability of many public universities to sustain the scholarly ambitions of the 1990s. The decline in resources has weakened the academic community’s capacity to offset the impact of the policy initiatives of the Bush Administration and the systematic denial of visas for Cuban scholars to travel to the United States.

**Challenging the sanctions policy**
Since the end of the Cold War, there has been considerable U.S. congressional opposition to the continuation of sanctions against Cuba. The 1994 Free Trade in Ideas Act included a provision expressing the sense of the Congress that the president should not restrict travel for informational, educational, religious, cultural or humanitarian purposes. The legislative debates over the CDA and Helms-Burton were extended and highly contentious.

In recent years, as Cuba has given the lie to the predictions of imminent collapse that informed the CDA and Helms-Burton, there have been repeated efforts in Congress to change the sanctions policy. A broad coalition of farm state legislators eager to trade with the island, civil society groups opposed to economic sanctions on humanitarian grounds, and Cuban Americans seeking reconciliation has succeeded in making U.S. policy toward Cuba an annual focus of legislative debate. The coalition has achieved major victories in regard to opening up U.S.-Cuban trade in foods and medicine. And since 2000, bipartisan majorities have voted several times to lift restrictions on travel to Cuba. For example, in the first session of the 108th Congress (2003), the House of Representatives approved one provision that would have denied the Treasury Department the funds to enforce the travel ban, and another that would have restored the people-to-people exchanges eliminated

---

139 Lorena Barbería, “Cuban Visas Memorandum, David Rockefeller Center for Latin American Studies, Harvard University,” December 5, 2005. Of the 32 visa applications by scholars associated with the Ministry of Science, Technology and the Environment, January-November 2005, 19 were denied (59 percent).
by the March 2003 regulations. In the fall of 2003 the Senate also approved for the first time a provision to end the ban on travel to Cuba. But the provisions were dropped in conference, leading Sen. Max Baucus (D-MT) to decry the fact that “this sets a dangerous, undemocratic precedent….”140 A year later, the House approved several amendments designed to block the implementation of several of the Powell Commission recommendations restricting travel. These provisions were also dropped in conference.141

One bright spot for U.S.-Cuban scholarly collaboration has come about because of judicial challenges to the Bush Administration’s effort to limit the access of foreign scholars and writers to the U.S. public. Although both the 1988 Berman Amendment and the 1994 Free Trade in Ideas Act exempt information and informational materials from economic sanctions, informal communication of the Institute of Electrical and Electronic Engineers with OFAC in early 2002 indicated that publishing and/or editing the work of scholars from sanctioned countries could be illegal.142 OFAC made its interpretation public on September 30, 2003, in a ruling in response to IEEE that acknowledged the Berman Amendment, confirmed that peer review of manuscripts was authorized, but indicated that collaboration or editing on manuscripts would need to be licensed because such enhancements provided a prohibited service.143 In response again to IEEE, OFAC modified the ruling in April 2004, explaining that routine style and copy editing was exempt, as was IEEE’s limited peer review process for completed manuscripts (not commissioned or new material).144 In July 2004, OFAC indicated that newspapers could substantially edit opinion or editorial pieces, however, and in October, OFAC clarified yet again its position with regard to editorial practices of the IEEE. Nevertheless, with the possibility of prison sentences of up to ten years and fines of as much as $1 million per violation, six Cuban projects were put on hold or suspended.145

In response, a lawsuit was filed by the American Association of Publishers Professional and Scholarly Publishers Division, the Institute of Electrical and Electronic Engineers, the Association of University Presses, Pen American Center (PEN), and Arcade Publishing. The suit argued that such sanctions on publishing

141 Castro 2005, op.cit.
142 IEEE, a 360,000-member organization with members/chapters in Iran and other sanctioned countries, was attempting to clarify which services to its membership were illegal. John Dudley Millar, “Publishers Steamed by US Ban,” The Scientist, March 2, 2004, www.the-scientist.com/news/20040302/04. See also the IEEE web site section on its dealings with OFAC, IEEE & OFAC: Information Update, accessible via www.ieee.org.
143 “September 30, 2003 OFAC Ruling to IEEE (031002-FARCL-IA-11),” accessed at http://www.aau.net/ofac/. The ruling focused on Iranian authors and in other September rulings on publishing work by Iranians in the United States or publishing of U.S. work in Iran; it was indicated that marketing and distribution were not exempt, nor was arranging to create new work.
violated the Trading with the Enemy Act, International Emergency Economic Powers Act, and the first amendment of the U.S. Constitution. It stated:

Congress has twice declared that U.S. trade embargoes may not be allowed to restrict the free flow of information and ideas as that is vital to our understanding of the world. Yet the defendants have promulgated and maintained restrictions on publishing works from sanctioned countries, in defiance of the Berman Amendment and the Free Trade in Ideas Amendment, which explicitly deprive the Executive Branch of authority to regulate or prohibit, directly or indirectly, transactions for information and informational materials, including publications of all kinds.

A second suit was filed against OFAC in October 2004 by Shirin Ebadi, an Iranian writer who received a Nobel Peace Prize in 2003, and her literary agency, The Strothman Agency LLC of Boston.

The legal strategy was successful. OFAC provided a different interpretation of the status of information and ideas, as reflected in revised regulations issued on December 15, 2004. The new regulations established a general license permitting all transactions necessary and incident to the publishing and marketing of written publications, including manuscripts, books, journals, and newspapers, in paper or electronic form. Activities that are explicitly mentioned in the regulations as allowable include commissioning a work, editing, translating, adding artwork or graphics, and conducting a marketing campaign in Cuba. The Cuban government may not be a party to transactions for these purposes, but the definition of “government of Cuba” excludes all Cuban academic and research institutions. The regulations thus open the door to many new forms of scholarly collaboration never before allowed under the sanctions policy. Ebadi’s suit was settled in April 2005.

Conclusions and recommendations

In 1976, reflecting on his most significant legislative achievements, Sen. William J. Fulbright explained his support for international educational exchange:

In introducing the basic legislation in 1945 for the educational exchange program, it was my thought that if large numbers of people know and understand the people from nations other than their own, they might develop a capacity for empathy, a distaste for killing other men, and an inclination to peace. If the competitive urge of men could be diverted from military to cultural pursuits, the world could be a different and better place to live.

Nearly twenty years later, one of the Powell Commission’s recommendations might seem to share Sen. Fulbright’s insight:

...expand and emphasize exchange opportunities, making them available to Cuban educators, students, community leaders, civic groups, and business entrepreneurs, including arrangements providing opportunities for two-way of exchange of people and information (the U.S. Fulbright Exchange program and related programs can be of great assistance in this process).
But in fact the two positions could not be more different. Throughout the Cold War, Sen. Fulbright believed that U.S. citizens should engage those who thought differently, who opposed the United States, or whom the United States opposed. He held a quintessentially liberal belief in the transformative power of education and knowledge. Today, the U.S. government’s position is quite different: educational exchange programs will be part of the reward for Cuba once the current regime has been overthrown and political and economic systems have been established of which the United States approves. The Fulbright Program has never included Cuban students and scholars, nor funded U.S. academics to work or study in Cuba. The Commission recommendation above is for a post-Castro Cuba only.

In the mid-1990s, in the midst of the politicization of academic relations due to the CDA, a Cuban analyst who had led efforts to gain legal recognition for non-governmental organizations on the island came to Washington to make the case for respectful engagement. “We believe in our ideas,” he argued. “We may be wrong, but we are prepared to defend them, and to be challenged, in open debate, based on a premise of mutual respect. Why can we not try a debate of ideas?” Ten years later, what is most notable is that the United States has stepped back even further from respectful debate. In the 1990s, many of those who supported the Track II people-to-people strategy did so because they believed that U.S. ideas would prevail. Today the U.S. government has decided to drastically reduce the people-to-people engagement between the two countries, while promoting the cut-off of dollars to the island. For the current U.S. administration, a battle of ideas that changed the minds of many U.S. citizens has given way to an ever more explicit strategy of seeking to deprive Cubans of material sustenance to foment political opposition.

Since 2000, the Bush Administration has resuscitated a visa policy that discriminates on the basis of ideology and political affiliation, and has prohibited travel by Cuban Americans seeking to visit their families, contravening international anti-discrimination law and the right to travel. The administration has set aside legislative intent by eliminating two categories of travel, people-to-people exchanges and fully-hosted travel, understood to have been written into law, and thus no longer subject to such executive action.151 Through 2004 the Republican leadership of the Congress ignored repeated votes in both chambers to end restrictions on travel to Cuba. A policy that disregards law and legislative intent and fails to respect the will of the majority can make no credible claim to be a policy that promotes democracy.

Many scholars and academic associations have joined with other organizations to express their opposition to the Bush Administration efforts to cripple or close down channels of academic and educational exchanges between Cuba and the United States. The U.S.

---

151 The 2000 Trade Reform and Export Enhancement Act, which authorized trade in food and medicines with Cuba, also wrote into law the existing categories of allowable travel. The understanding at the time was that the provision would preclude the creation of new categories of exemptions to the travel ban, as well as the elimination of existing categories. But to date members of Congress have not been able to enforce this understanding politically.
Commission for Assistance to a Free Cuba’s recommendations in particular have received criticisms from many fronts. The Latin American Studies Association was joined by the American Association of University Professors and other professional organizations in decrying the denial of visas for the 2004 LASA Congress and response to the 2006 denial has begun. An Emergency Coalition to Defend Educational Travel (ECDET) has been created, sponsored by the Center for International Policy and the Institute of Shipboard Education; and the Freedom to Travel Campaign, the Latin America Working Group (LAWG) and Washington Office on Latin America (WOLA) organized an “Cuba Action Day” in April 2005. ECDET has organized a lawsuit which challenges the restrictive rules on educational travel in several ways, including a request for judicial review of administrative rule making, a Fifth Amendment Due Process claim of “impermissible infringement on the right to travel,” and a First Amendment challenge based on grounds of academic freedom.

Cubans are mentioned in the lawsuit filed November 10, 2005, by the ACLU and AAUP against the State Department and other agencies of the U.S. government, requesting release of information related to the use of Section 411 of the Patriot Act to deny visas to foreign scholars. In the first months of 2006, LAWG and WOLA provided support to the efforts of Jeff Flake (R-Arizona) and Barbara Lee (D-California) to lift OFAC restrictions on religious and humanitarian travel to Cuba.

It is critically important that all such voices continue to press U.S. policy-makers on behalf of freedom of expression and the right to travel. The advocacy agenda should include rescinding Proclamation 5377 and opposition to the politicization of the visa process through the capricious application of Section 212(f), and recognizing universities’ prerogatives to develop, structure and control their curricula free of political intervention or oversight by government officials. Legislation to lift the ban on travel should be passed again as soon as possible. Until the travel ban can be lifted completely, graduate, undergraduate and short-term educational exchanges of various types—including the non-credit bearing exchanges that have always been important in academic relations, should be authorized by general license. The efforts of those members of

In the past and over time, academic exchange has contributed to the easing of tensions and the resolution of conflict.

Office on Latin America (WOLA) organized a “Cuba Action Day” in April 2005. ECDET has organized a lawsuit which challenges the restrictive rules on educational travel in several ways, including a request for judicial review of administrative rule making, a Fifth Amendment Due Process claim of “impermissible infringement on the right to travel,” and a First Amendment challenge based on grounds of academic freedom. Cubans are mentioned in the lawsuit filed November 10, 2005, by the ACLU and AAUP against the State Department and other agencies of the U.S. government, of Section 212(f), and recognizing universities’ prerogatives to develop, structure and control their curricula free of political intervention or oversight by government officials. Legislation to lift the ban on travel should be passed again as soon as possible. Until the travel ban can be lifted completely, graduate, undergraduate and short-term educational exchanges of various types—including the non-credit bearing exchanges that have always been important in academic relations, should be authorized by general license. The efforts of those members of

---


153 Robert L. Muse, Muse & Associates, “Memorandum: A Court Challenge to the U.S. Government’s Regulations Restricting Travel to Cuba for Academic Purposes,” Washington, D.C., July 8, 2005. The law suit seeks relief through judicial declarations “(i) that the June 2004 rules are without basis in either the language or purpose of the Trading with the Enemy Act and therefore do not meet the standard of ‘reasonableness’ required of OFAC when promulgating regulations pursuant to the authority of the statute; (ii) that they violate the APA’s prohibition on arbitrary and capricious agency actions, and (iii) that they violate the First and Fifth Amendments of the Constitution. Should the court make the declarations requested of it, it will then necessarily issue a permanent injunction enjoining OFAC from enforcing the June, 2004 rules.”


Congress who have supported the lifting of the travel ban should be applauded, at the same time that Congress should be encouraged to defend its prerogatives vis-à-vis the executive branch. If U.S. democracy is to work, law and legislative intent must be respected by implementing agencies.

More broadly, the Congress should undertake a comprehensive review of the impact of post-9/11 visa policies on freedom of expression and association, as these rights are exercised through academic exchange, with the goal of correcting any negative effects through legislation. The review should include, but not be limited to, the impact on academic relations with Cuba. In the past and over time, academic exchange has contributed to the easing of tensions and the resolution of conflict. In today’s complex, globalized, conflict-ridden world, it is past time to recognize the positive contributions of this form of transnational collaboration.156

Throughout the years of U.S. unilateral economic sanctions against Cuba, it is scholars and scientists in the two countries who have sustained intellectual and academic relations. At this critical juncture, the two academic communities should join forces to think creatively about ways to maximize the opportunities that do exist for exchanges and collaborations under the current sanctions regulations. This could mean, for example, re-structuring programs to meet the current criteria, increasing attention to long-term research projects, designing new publishing collaborations, or considering ways to triangulate activities through third countries. U.S. colleges and universities are already beginning to develop more semester-long programs in Cuba, to meet the ten-week stipulation. What is absolutely fundamental is that academic institutions not give up their commitment to engage Cuba. Scholars and academic institutions alike should clearly and consistently communicate their dissatisfaction with current U.S. policy to the Congress and the Bush Administration, and they should encourage donor agencies to increase support for engaging Cuba.

Similarly, Cuban universities and academic institutions should make full use of all existing opportunities to engage scholars and intellectuals from the United States. The Ministries of Foreign Relations, Higher Education, Culture, and Science, Technology and Environment should continue to do everything possible to facilitate engagement between the Cuban and United States academic and intellectual communities. In the mid-1990s, confronted with the subversive intent of the CDA, Cuba defended itself by making academic exchange more difficult, and incurred significant criticism as a result. The Track II approach of the 1990s failed in its attempt to use academic exchanges for the ends of foreign policy, and today it is the United States that is placing obstacles in the way of academic relations. Despite the past and present problems created by U.S. policies, Cuba can respond by reaffirming its own commitment to intellectual engagement and moving to eliminate any remaining obstacles on its side.

156 Alzugaray 2005, op.cit.


APPENDIX 1
The current regulations

Under current U.S. Treasury Department regulations, licenses are available for many activities related to professional research and academic exchange.

Financial transactions incident to the following activities are authorized by general license:

- **Travel to Cuba by full-time professionals to conduct professional research in their professional areas, provided that** the research is of a non-commercial, academic nature; comprises a full work schedule in Cuba; and has a substantial likelihood of public dissemination. Public dissemination can include publication of articles, the delivery of lectures or the inclusion of the research in classroom instruction.

- **Travel to Cuba by professionals to attend professional meetings or conferences in Cuba organized by an international professional organization, institution or association that regularly sponsors meetings or conferences in other countries, provided that** the sponsoring organization is not headquartered in the United States unless it has been provided a specific license to sponsor the meeting in Cuba; the purpose of the meeting is not the promotion of tourism or other commercial activity in Cuba; and the meeting is not intended primarily to foster production of any biotechnological products. The license does not extend to conferences organized by the Cuban offices of international organizations. It does extend to conferences organized by third-country offices of organizations such as the UN or PAHO, even though these are headquartered in the United States.

Because these activities are authorized by general license, individuals who meet the criteria do not need to obtain U.S. documentation in advance. But any individual traveling under a general license should be prepared to justify the trip if asked by U.S. officials upon return. It is recommended that individuals carry documents that support their eligibility to travel under general license, such as copies of curriculum vita and full-time work schedules in Cuba.

Individuals wishing to conduct research or attend professional meetings that do not meet the criteria above may apply for specific licenses.

As of December 2004, also authorized under **general license** are all transactions necessary and ordinarily incident to the publishing and marketing of written publications, including manuscripts, books, journals, and newspapers, in paper or electronic form. Although transactions in which the government of Cuba is a party are not covered under the license, the definition of “government of Cuba” excludes all academic and research institutions and their personnel. Specifically, the transactions incident to the following activities are allowed:

- Commissioning and making advance payments for identifiable written publications not yet in existence.
- Collaborating on the creation and enhancement of written publications.
- Augmenting written publications through the addition of items such as photographs, artwork, translation, and explanatory text.

---

157 The regulations in effect as of July 2005 can be found at 69 FR 33768, June 16, 2004, and 69 FR 75468, December 17, 2004. Memoranda interpreting the regulations were prepared by the law firm Rabinowitz, Boudin, Standard, Krinsky & Lieberman, PC., and are reprinted at the end of this report, Appendices 6 and 7.
Creating or undertaking a marketing campaign to promote a written publication.

Other transactions necessary and incident to the publishing and marketing of written publications.

The services of a publishing house or translators in Cuba may be engaged if primarily for the dissemination of written publications in Cuba.

The regulations exclude from the general license the development, production, design or marketing of software, or any technology controlled by specified U.S. arms control, dual use or atomic energy regulations.

Specific licenses of up to one year may be issued to accredited U.S. undergraduate or graduate degree-granting academic institutions, their students or their full-time permanent employees for travel incident to the following educational activities:

- Participation in a structured educational program in Cuba as part of a course offered at the licensed institution, provided the course will be no shorter than ten weeks in duration.

- Non-commercial academic research in Cuba specifically related to Cuba and for the purpose of obtaining a graduate degree.

- Participation in a formal course of study at a Cuban academic institution, provided the course will be accepted for credit toward the student's degree and will be no shorter than ten weeks in duration.

- Teaching at a Cuban academic institution by an individual regularly employed in a teaching capacity at the licensed institution, provided the teaching activities are related to an academic program at the Cuban institution and provided that the duration of the teaching will be no shorter than ten weeks.

- Sponsorship of a Cuban scholar to teach or engage in other scholarly activity at the licensed institution.

- The organization and preparation of any of the above activities by a full-time permanent employee of the licensed institution.

To apply for a specific license, individuals and institutions should consult the Treasury Department's "Comprehensive Guidelines for License Applications to Engage in Travel-Related Transactions Involving Cuba," available at www.treas.EOV/offices/enforcement/ofac/sanctions/cuba_tr_app.pdf.

---

158 The most recent revision of the "Comprehensive Guidelines" was issued on September 30, 2004.
## APPENDIX 2: Travel for professional research, study, and educational exchange: the evolution of opportunities

### Professional research and meetings

<table>
<thead>
<tr>
<th>DATE</th>
<th>ALLOWABLE ACTIVITIES</th>
<th>TYPE OF LICENSE</th>
</tr>
</thead>
<tbody>
<tr>
<td>January 1961</td>
<td>No travel to Cuba by U.S. citizens allowed without endorsed passports from the State Department. Endorsement available only in extremely limited circumstances, not including scholars or professional researchers.</td>
<td></td>
</tr>
<tr>
<td>July 1974</td>
<td>Travel authorized for U.S. scholars for purpose of study and research.</td>
<td>Specific, with endorsed passport</td>
</tr>
<tr>
<td>March 1977</td>
<td>All economic transactions incident to travel to Cuba authorized, including professional researchers.</td>
<td>General</td>
</tr>
<tr>
<td>April 1982</td>
<td>General license established for persons traveling to engage in professional research or other similar activities.</td>
<td>General</td>
</tr>
<tr>
<td>July 1982</td>
<td>The exception for professional researchers is limited to full-time researchers investigating topics specifically related to Cuba, who were likely to disseminate the product of their work, and who engage in recreational activities only to the extent consistent with a full schedule of research activities.</td>
<td>General</td>
</tr>
<tr>
<td>November 1992</td>
<td>Research must be generally of a non-commercial, academic nature.</td>
<td>General</td>
</tr>
<tr>
<td>August 1994</td>
<td>1. “Professional research” defined as that done by full-time professionals who travel to Cuba to do research in their professional areas, their research is specifically related to Cuba and will constitute a full work schedule in Cuba, and there is a substantial likelihood of public dissemination of the product of their research.</td>
<td>Specific</td>
</tr>
<tr>
<td></td>
<td>2. “Similar activities” defined to include attendance by professionals with an established interest in Cuba at professional meetings where research on Cuba is shared.</td>
<td></td>
</tr>
<tr>
<td>October 1995</td>
<td>1. Persons are considered to be engaging in “professional research” if they are full-time professionals who travel to Cuba to do research in their professional areas and their research is specifically related to Cuba; or if they are acting on behalf of an organization with an established interest in international relations to collect information related to Cuba. Must engage in full work schedule in Cuba, and there must be a substantial likelihood of public dissemination of the product of their research.</td>
<td>Specific</td>
</tr>
<tr>
<td></td>
<td>2. “Educational activities” defined to include attendance at a meeting or conference held in Cuba by a person with an established interest in the subject of the meeting, if the meeting is organized by an international institution or association that regularly sponsors meetings or conferences in other countries, and the purpose of the meeting is not the promotion of tourism or commercial activities in Cuba.</td>
<td></td>
</tr>
<tr>
<td>May 1999</td>
<td>1. Authorizes travel transactions for full-time professionals who travel to Cuba to conduct professional research in their professional areas, provided that the research is of a non-commercial, academic nature; comprises a full work schedule in Cuba; and has a substantial likelihood of public dissemination. Specifically excludes research for personal satisfaction only, or travel that includes free time inconsistent with a full work schedule.</td>
<td>General (with caveat for attendance at professional meetings)</td>
</tr>
<tr>
<td></td>
<td>2. Authorizes travel-related transactions for professionals to attend professional meetings or conferences in Cuba organized by an international professional organization, institution or association that regularly sponsors meetings or conferences in other countries, provided that the sponsoring organization is not headquartered in the United States unless it has been provided a specific license to sponsor the meeting in Cuba; the purpose of the meeting is not the promotion of tourism or other commercial activity in Cuba; and the meeting is not intended primarily to foster production of any biotechnological products. Specific licenses may be issued for meetings or conferences that do not qualify under the general license.</td>
<td></td>
</tr>
<tr>
<td>June 2004</td>
<td>Clarifies that travel incident to attendance at professional meetings or conferences is not authorized per the professional research provision (a)(1) of Section 515.564, but must qualify in accordance with provision (a)(2) (as described in item (2) above).</td>
<td>General</td>
</tr>
</tbody>
</table>
### APPENDIX 2: Travel for professional research, study, and educational exchange: the evolution of opportunities

#### Student travel and educational exchanges

<table>
<thead>
<tr>
<th>DATE</th>
<th>ALLOWABLE ACTIVITIES</th>
<th>TYPE OF LICENSE</th>
</tr>
</thead>
<tbody>
<tr>
<td>January 1961</td>
<td>No student travel or educational exchanges allowed.</td>
<td></td>
</tr>
<tr>
<td>March 1977</td>
<td>All economic transactions incident to travel to Cuba authorized, including those for students at any level.</td>
<td>General</td>
</tr>
<tr>
<td>April 1982</td>
<td>No student travel or educational exchanges allowed.</td>
<td></td>
</tr>
<tr>
<td>August 1994</td>
<td>“Similar activities” defined to include travel for non-commercial research purposes specifically related to Cuba by persons who are working to qualify themselves academically as professionals; e.g., certain graduate degree candidates. Study visits to Cuba in connection with pre-college or undergraduate college course work are explicitly excluded.</td>
<td>Specific</td>
</tr>
</tbody>
</table>
| October 1995 | 1. “Travel related to educational activities” is authorized, including activities related to study for an undergraduate or graduate degree sponsored by a college or university located in the United States.  
2. “Transactions related to educational exchanges” are authorized, including teaching at a Cuban academic institution by an individual regularly employed in a teaching capacity at a college or university in the United States; the sponsorship of a Cuban scholar to teach or engage in scholarly activity at a college or university located in the United States; participation in a formal course of study at a Cuban academic institution by a graduate or undergraduate student; and the organization of such activities. | Specific         |
| May 1999     | Licenses authorized for travel for “educational activities,” including (a) participation in a structured educational program by undergraduate or graduate students as part of a course offered at an accredited U.S. college or university; (b) non-commercial academic research specifically related to Cuba by a person working to qualify academically as a professional; (c) participation in a formal course of study at a Cuban academic institution by an undergraduate or graduate student currently enrolled in a degree program at an accredited U.S. college or university; if the formal course of study in Cuba will be accepted for degree credit; (d) teaching at a Cuban academic institution by an individual regularly employed in a teaching capacity at an accredited U.S. college or university; (e) sponsorship, including payment of a stipend or salary, of a Cuban scholar to teach or engage in other scholarly activity at a college or university in the United States; (f) educational exchanges sponsored by Cuban or U.S. secondary schools involving secondary school students’ participation in a formal course of study or in a structured educational program offered by a secondary school or other academic institution and led by a teacher or other secondary school official; (g) educational exchanges not involving academic study pursuant to a degree program when those exchanges take place under the auspices of an organization that sponsors and organizes such programs to promote people-to-people contact; (h) the organization and preparation of such activities. | Specific, for up to two years |
| March 2003   | Revoked authorization to provide licenses for “people-to-people” educational exchanges unrelated to academic coursework [as per item (g) in May 1999 above]. |                 |
| June 2004    | Authorizes provision of licenses to accredited U.S. undergraduate or graduate degree-granting academic institutions, its students or its full-time permanent employees for travel incident to “educational activities,” defined to include (a) participation in a structured educational program in Cuba as part of a course offered at the licensed institution, provided the course will be no shorter than ten weeks in duration; (b) non-commercial academic research in Cuba specifically related to Cuba and for the purpose of obtaining a graduate degree; (c) participation in a formal course of study at a Cuban academic institution, provided the course will be accepted for credit toward the student’s degree and will be no shorter than ten weeks in duration; (d) teaching at a Cuban academic institution by an individual regularly employed in a teaching capacity at the licensed institution, provided the teaching activities are related to an academic program at the Cuban institution and provided that the duration of the teaching will be no shorter than ten weeks; (e) sponsorship of a Cuban scholar to teach or engage in other scholarly activity at the licensed institution; and (f) the organization and preparation of such activities by a full-time permanent employee of the licensed institution. | Specific, up to one year only |
APPENDIX 3

United States academic and research institutions that have sponsored programs of exchange and engagement with Cuba

Alfred University
American University
Appalachian State University
Association of Systematics Collections
Augsburg College
Bethany College
Bethel University
Boston University
Bridgewater State College
Brown University
Butler Institute for Study Abroad
California State Polytechnic University, Pomona
California State University, San Bernardino
California State University, Los Angeles
Center for Cross Cultural Study
Center for Marine Conservation
Central Michigan University
City College of San Francisco
City University of New York
College of Charleston
Columbia University
Council on Foreign Relations, Washington, DC
Cuban Resource Center
DePaul University
Dickinson College
Duke University
East Tennessee State University
Emory University
Florida International University, Institute of Cuban Studies
Gaylan Community College
George Washington University
Georgetown University
Goshen University
Hampshire College
Harrisburg Area Community College (Pennsylvania)
Harvard University
Indiana University
Institute for Policy Studies
Inter-American Dialogue
Johns Hopkins University, School for Advanced International Studies
Kennesaw State University
Library of Congress
Marist College (Poughkeepsie, NY)
Massachusetts Institute of Technology
Michigan State University
National Security Archive
New York Botanical Garden
Northern Arizona University
Ohio State University
Pennsylvania State University
Princeton University
Purdue University
Rapeo College of New Jersey
RARE Center for Tropical Conservation
Rice University
Roanoke College
Rochester Institute of Technology
Rowan University (Camden, NJ)
Rutgers University, Camden
San Diego State University
Santa Clara University
Sarah Lawrence College
School of the Art Institute of Chicago
Siena College
Smith College
Smithsonian Institution
Social Science Research Council
Southeast Missouri State University
State University of New York, Buffalo
State University of New York, Oswego
Stetson University
Thomas Jefferson University (Philadelphia, PA)
Towson University
Tulane University
University of Akron
University of California, Berkeley
University of California, Irvine
University of California, Los Angeles
University of California, San Diego
University of Chicago
University of Delaware
University of Denver
University of Florida, Gainesville
University of Georgia, Center for International Trade and Security
University of Illinois at Urbana-Champaign

159 Selected list drawn from authors' research; not intended to be comprehensive.
University of Iowa
University of Kansas
University of Massachusetts, Amherst
University of Massachusetts, Boston
University of Miami
University of Michigan
University of New Mexico
University of North Carolina, Chapel Hill
University of North Texas
University of Notre Dame
University of Pittsburgh
University of Rochester/CIEE
University of St. Thomas (St. Paul, MN)
University of South Florida
University of Southern California

University of Texas, Austin
University of Vermont
University of Wisconsin, Madison
University of Wisconsin, Milwaukee
Vanderbilt University
Virginia Polytechnic Institute and State University
Wake Forest University
Wayne State University
Willamette University
Woodrow Wilson International Center for Scholars
World Music Institute (San Francisco, CA)
Yale University

---

**APPENDIX 4**

Professional associations based in the United States with Cuban members or that have engaged Cuba

American Association of State Colleges and Universities
American Association of University Professors (AAUP)
American Chemical Society
American Council of Learned Societies (ACLS)
American Library Association
American Neurological Association
American Physical Society
American Political Science Association (APSA)
American Public Health Association (APHA)
American Sociology Association
American Studies Association (ASA)
Association of International Education Administrators
Comparative and International Education Society
Association of Radical Philosophers
Conference for Latin American History (CLAH)
International American Studies Association (IASA)
International Studies Association (ISA)
LASPAU, Academic and Professional Programs for the Americas
Latin America Studies Association (LASA)
Midwest Political Science Association
Society of American Law Teachers
Southeastern Council on Latin American Studies (SECOLAS)
U.S. Council on European Studies

---

\(^{160}\)Selected list drawn from authors' research; not intended to be comprehensive.
APPENDIX 5
Cuban institutions that have participated in collaborative programs with the United States\footnote{Selected list drawn from authors' research; not intended to be comprehensive.}

Academia de Ciencias de Cuba
Archivo Nacional de Cuba
Archivo Provincial de Cienfuegos
Asociación de Pedagogos Cubanos
Asociación por la Unidad de Nuestra América (AUNA)
Biblioteca Nacional
Centro Cubano de Antropología
Centro de Conservación, Restauración y Museología (CENCREM)
Centro de Estudios sobre América (CEA)
Centro de Estudios Europeos (CEE)
Centro de Estudios de Información de la Defensa (CEID)
Centro de Estudios Martianos
Centro de Estudios sobre África y Medio Oriente (CEAMO)
Centro de Estudios sobre Asuntos de Seguridad Nacional
Centro de Investigaciones de la Economía Mundial (CIEM)
Centro de Investigaciones Marines
Centro de Investigaciones Psicológicas y Sociológicas (CIPS)
Centro de la Investigación y el Desarrollo de la Cultura Cubana Juan Marinello
Centro Martin Luther King
Centro de Ingeniería Genética y Biotecnología (CIGB)
Facultad Latinoamericana de Ciencias Sociales (FLACSO), Cuba
Grupo de Desarrollo Integral de la Capital
Instituto Cubano de Arte e Industria Cinematográfica (ICAIC)
Instituto de Ecología y Sistemática
Instituto de Historia
Instituto de Información Científica y Tecnológica (IDICT)
Instituto de Investigaciones en Fruticultura Tropical
Instituto de Literatura y Lingüística
Instituto de Medicina Tropical Pedro Kourí
Instituto Politécnico Superior José Antonio Echeverría (ISPJAE)
Instituto Superior de Arte (ISA)
Instituto Superior de Relaciones Internacionales (ISRI)
Jardín Botánico Nacional de Cuba
Ministerio de Ciencia, Tecnología y Medio Ambiente (CITMA)
Ministerio de la Información y las Comunicaciones
Ministerio de Salud Pública (MINSAP)
Museo Antropológico Montané
Museo Histórico de las Ciencias Carlos J. Finlay
Sociedad Cubana de Química
Unión Nacional de Escritores y Artistas de Cuba (UNEAC)
Universidad Agraria de La Habana
Universidad de La Habana
Centro de Estudios de Migraciones Internacionales (CEMI, formerly CEAP)
Centro de Estudios de la Economía Cubana (CEEC)
Centro de Estudios sobre Estados Unidos (CESEU)
Centro de Investigaciones de la Economía Internacional (CIEI)
Facultad de Economía de la Universidad de La Habana
Facultad de Filosofía e Historia de la Universidad de La Habana
Grupo Interdisciplinario para América Latina y el Caribe
Universidad de Holguín
Universidad de Santiago de Cuba
Universidad de Santa Clara
April 10, 2006

From: Michael Krinsky, Esq.

Re: U.S. Restrictions On Professional Research
And Educational Activities In Cuba

In this memorandum, we provide an overview of current U.S. restrictions on professional research and educational activities in Cuba. On June 16, 2004, the Treasury Department's Office of Foreign Assets Control ("OFAC") issued relevant amendments to the Cuban Assets Control Regulations ("CACR"), and, on September 30, 2004, issued "Comprehensive Guidelines" that also are relevant.

CAUTION: In this memorandum, we do not offer legal advice to persons wishing to engage in Cuba-related transactions, and we assume no responsibility in connection with their engaging in such transactions.

Professional Research

General License for Professional Research

As was the case prior to the June 16, 2004 amendments, full-time professionals may travel to Cuba to carry out a full work schedule of professional research in their professional areas, provided that the research has a substantial likelihood of public dissemination.

The requirement of "public dissemination" can be satisfied in a variety of ways, including, without limitation, the publication of articles, the delivery of lectures or the inclusion of the research in classroom instruction.

The research must be of a "non-commercial, academic nature." However, this does not exclude, for example, publication of a book, or delivery of a lecture, for a fee.

Travel by qualifying persons for professional research is authorized by a provision of the CACR, called a "general license," that sets out the requirements for this type of travel. There is no need for the concerned person to obtain any document...
from the U. S. government authorizing the trip. If a person meets the criteria set out in the "general license", then he or she can travel for professional research purposes without any government documentation.

However, any individual traveling pursuant to this general license should be prepared to justify the trip if queried by U.S. Customs or by OFAC. It is recommended that the individual travel with a copy of his or her curriculum vitae. If possible, it may also be helpful to bring an advance work plan outlining a full work schedule of professional research, even if the schedule is tentative.

**Specific Licenses for Professional Research**

When the "general license" is inapplicable, a professional may be able to obtain authorization for professional research by applying to OFAC for a specific license.

For example, a person may not be a "full-time" professional in a field because he or she is retired. For this reason, the individual would not qualify for the general license for professional research. However, it is possible that OFAC may grant a specific license to this individual on application.

Specific licenses are usually granted only for professional research "specific to Cuba" that "cannot take place elsewhere." In this regard, it is unlike the general license for professional research, which is not limited to Cuba-specific research.

Authorization for multiple trips may be requested by persons "demonstrating a significant record of research."

An application is made to OFAC in letter form. The specifics required for the application are set out in an OFAC publication, "Comprehensive Guidelines for License Applications To Engage in Travel-Related Transactions Involving Cuba." It is available on the OFAC website at

[http://www.treas.EOV/offices/enforcement/ofac/sanctions/cuba_tr_app.pdf](http://www.treas.EOV/offices/enforcement/ofac/sanctions/cuba_tr_app.pdf)

Interested individuals must make sure to consult the most recent revision of the "Comprehensive Guidelines." It is important to follow these guidelines carefully, as OFAC has become prone to reject applications for technical defects.

**Attendance at Professional Meetings or Conferences**

"International" conferences and meetings

Attendance at professional meetings or conferences does NOT qualify as professional research.

However, full-time professionals may attend professional meetings or conferences in Cuba organized by an "international" professional organization, institution or association that regularly sponsors meetings or conferences in other countries. This authorization is provided by a general license in the CACR; the professional need not make an application to OFAC for a specific license.

To come within this general license, it is NOT sufficient that an international body endorses the conference or meeting. Rather, it must organize the event. This does
not exclude the possibility of a Cuban entity working with the international body to help
organize the event, or even being listed as a co-organizer.

To qualify as the organizer of a conference covered by this general license, the
"international" body generally may not be headquartered in the United States. An
international organization headquartered in the U.S. must obtain a specific license from
OFAC in order to organize a conference in Cuba.

However, OFAC has crafted an exception for the third-country offices of
organizations such as the United Nations or PAHO, even if those organizations are
headquartered in the United States. The third-country offices, but not the U.S. offices, of
those organizations may organize qualifying conferences in Cuba.

It is OFAC’s position that the general license does not apply to conferences
organized by institutions headquartered in Cuba, even if they are “international,” rather
than Cuban. OFAC’s assumption is that such organizations do not regularly sponsor
conferences in different countries and so do not meet the requirements of the general
license for that reason. OFAC takes the same position for conferences organized by the
Cuban offices of international organizations headquartered outside of Cuba, on a similar
assumption. OFAC’s assumptions may be unfounded in some circumstances; in those
instances, the matter might be usefully raised with OFAC.

Companies that are in the business of running conferences also do not qualify,
since they are not “professional” bodies.

Full-time professionals may attend international conferences or meetings
satisfying the above criteria without obtaining any documentation from the U.S.
government.

Other conferences and meetings

Except for conferences organized by qualifying international bodies, professionals
must obtain a specific license from OFAC to attend a conference or meeting related to his
or her field and expertise.

The application for a specific license must explain why attendance is "necessary,"
and must explain "whether a similar conference elsewhere is not readily available."
However, the subject matter of the conference need not be specific to Cuba.

An application may be made to OFAC in letter form. The specifics required for
the application are set out in OFAC’s "Comprehensive Guidelines."

A full-time professional pursuing a full work schedule of research pursuant to the
general license for professional research may attend sessions of a professional meeting
or conference, provided that attendance is not inconsistent with his or her full-work
schedule of professional research outside of the meeting or conference.

Academic Study in Cuba

An accredited college or university may obtain a specific institutional license
from OFAC for its students to carry out three types of authorized educational activities in
Cuba: student participation in a structured educational program in Cuba that is part of a
course offered at the licensed U.S. college and university; a formal course of study at a Cuban academic institution; and graduate student research.

In addition, students attending U.S. colleges or universities without institutional licenses may apply for specific licenses to pursue academic work in Cuba in certain circumstances.

In its application for a specific institutional license, the college or university need not provide any details as to the programs it will conduct under the license. Once granted the license, a college or university can authorize its qualifying students to engage in any of the authorized educational activities.

It is been our experience to date that applications by accredited colleges or universities are routinely granted.

Under the June 16, 2004 amendments, OFAC will grant specific licenses to colleges and universities for one year's duration only, in contrast to the two-year duration of pre-June 16, 2004 licenses.

OFAC altered the prior provisions concerning educational activities in other important respects.

Colleges and universities issued institutional licenses prior to June 16, 2004 may continue to use those licenses until their expiration date, but the licenses can be used only for activities consistent with the June 16, 2004 amendments.

Courses offered by the licensed US. college or university

The specific licenses issued to accredited U.S. colleges and universities authorize "participation in a structured educational program in Cuba" that is part of a "course offered at the licensed U.S. college and university."

To participate, a student must be enrolled in an undergraduate or graduate degree program at the licensed college or university that is offering the course. In a change from the pre-June 16, 2004 regulations, students at other colleges or universities cannot participate even if their schools will accept participation for credit.

The program of study in Cuba must be no shorter than a "full term" of at least ten weeks' duration. The prior regulations had no duration requirement.

Employees of the licensed university or college who are both "full-time" and "permanent" are authorized to travel to Cuba to organize and participate in the program.

The licensed college or university simply must furnish a letter to the student for the student to travel to Cuba. There is no need for the student to make an application to OFAC, or for the college or university to give notice to OFAC that the student will be traveling under the auspices of the college or university.

For the details of what the institution's letter must state, see OFAC's Comprehensive Guidelines.

Formal course of study at a Cuban academic institution
Through two different mechanisms, college or university students may participate in "a formal course of study at a Cuban academic institution."

First, students enrolled at a U.S. college or university with a license to conduct educational activities may participate in "a formal course of study at a Cuban academic institution," provided that they will receive credit for that study at their U.S. college or university.

The student must be enrolled in an undergraduate or graduate degree program at the licensed U.S. college or university.

In a change from previous regulations, the course of study at the Cuban academic institution may be no shorter than 10 weeks in duration.

The licensed U.S. college or university simply must furnish a letter to the student for the student to travel to Cuba. There is no need for the student to make any application to OFAC, or for the college or university to give notice to OFAC that the student will be traveling under the auspices of the college or university.

For the details of what the U.S. institution's letter must state, see OFAC's Comprehensive Guidelines.

Second, students enrolled in U.S. colleges and universities without OFAC licenses to conduct educational activities may apply to OFAC for a license to participate in "a formal course of study at a Cuban academic institution."

The specific license will be granted only if the student's participation will be accepted for credit toward his or her undergraduate or graduate degree at the U.S. college or university where the student is enrolled.

The student must be enrolled in an undergraduate or graduate degree program at the college or university.

In a change from previous regulations, the course of study at the Cuban academic institution must be no shorter than 10 weeks in duration.

For the details of what the student's application must state, see OFAC's Comprehensive Guidelines.

Research by graduate students

Through two different mechanisms, graduate students may conduct "research" in Cuba. By "graduate" students, the CACR means persons who have already obtained a college or university degree, and are now pursuing a more advanced degree.

Prior to the June 16, 2004 amendments, research by persons working to qualify academically as a "professional" could be authorized by specific license. This included, but was not limited to, obtaining graduate degrees. The June 16, 2004 amendments limited student research to persons working toward a graduate degree. This change excludes persons who have no undergraduate degree, but are working toward obtaining a professional degree in nursing or engineering, for example.
**APPENDIX 6 (continued)**

Rabinowitz, Boudin, Standard, Krinsky & Lieberman, P.C., Attorneys at Law

“U.S. Restrictions on Professional Research and Educational Activities in Cuba” April 10, 2006

*First,* graduate students attending a college or university with a specific institutional license may travel to Cuba to do research that will be accepted for credit toward their graduate degree at the licensed institution. Graduate students enrolled at the licensed college or university may travel under the auspices of the institution’s license by obtaining a letter from the college or university stating that the student is enrolled as a graduate student and that the research will be accepted for credit toward his or her graduate degree.

The CACR does not expressly limit qualifying research to research for the student’s masters or doctoral thesis. Rather, the language of the relevant CACR permits colleges and universities with institutional licenses to authorize their graduate students to travel to Cuba for other research, provided that the research is “for the purpose of obtaining a graduate degree.”

The CACR does not specify a minimum, or maximum, period of time for graduate research in Cuba. However, the student must pursue a full work schedule in Cuba.

*Second,* graduate students at U.S. colleges or universities that do not have a specific license from OFAC for educational activities may themselves apply for specific licenses to conduct research in Cuba. These students will have to furnish a letter from their university stating that the research will be accepted for credit toward his or her graduate degree.

Graduate research must "specifically relate to Cuba." Graduate "research" is different than participating in a course of instruction.

It is possible, and perhaps likely, that, under current policy, OFAC will limit the grant of specific licenses to individual graduate students to research for the students’ masters or doctoral thesis.

For further details on the application process for individual graduate students, consult OFAC’s Comprehensive Guidelines.

**Note on Research by Faculty**

Faculty may conduct professional research, or attend professional meetings and conferences, in Cuba only if they meet the requirements for professional research or attendance at professional meetings set out above. The fact that their colleges or universities have specific licenses to conduct educational activities is irrelevant.

**Teaching at a Cuban Academic Institution**

The faculty of accredited U.S. colleges or universities with specific institutional licenses to conduct educational activities may teach at a Cuban academic institution, provided that the teaching activities are related to a Cuban academic program.

The faculty member must be a full-time and permanent employee of the U.S. college or university, and must be regularly employed in a teaching capacity at that college or university.

The faculty member’s teaching in Cuba must be no shorter than 10 weeks in duration.
APPENDIX 7

Rabinowitz, Boudin, Standard, Krinsky & Lieberman, P.C., Attorneys at Law
“General License for Cuba-Related Publishing” April 10, 2006

RABINOWITZ, BOUDIN, STANDARD, KRINSKY & LIEBERMAN, P.C.
ATTORNEYS AT LAW
111 BROADWAY, ELEVENTH FLOOR
NEW YORK, NY 10006-1901

TELEPHONE 212-254-1111
FAX 212-674-4614

April 10, 2006

From: Michael Krinsky, Esq.

Re: General License for Cuba-Related Publishing Activities

In this memorandum, we provide an overview of the General License for publishing activities, which the U.S. Treasury Department’s Office of Foreign Assets Control (“OFAC”) added to the Cuban Assets Control Regulations (“CACR”) on December 17, 2004. A copy of the General License, section 515.577 of 31 Code of Federal Regulations, is attached.

CAUTION: In this memorandum, we do not offer legal advice to persons wishing to engage in Cuba-related publishing transactions, and we assume no responsibility in connection with their engaging in such transactions.

1. OFAC’s General License authorizes U.S. persons to engage in a fuller spectrum of publishing and related activities than previously permitted. However, the General License excludes the “Government of Cuba” and certain categories of individuals from its coverage. As to the “Government of Cuba” and the excluded individuals, U.S. persons can still engage in the more limited range of publishing activities that are authorized by the Free Trade In Ideas Act, also known as the “Berman Amendment,” which Congress adopted in 1988 and then amended in 1994.

2. With the exception of transactions with the “Government of Cuba” and excluded persons, OFAC’s General License broadly authorizes persons and companies subject to United States jurisdiction (“U.S. persons”) “to engage in all transactions necessary and ordinarily incident to the publishing and marketing of manuscripts, books, journals, and newspapers” (collectively, “written publications”) (emphasis supplied).

3. The General License covers the publishing and marketing of written publications in “electronic format,” as well as in paper format. Thus, for example, it covers publishing manuscripts, books, journals and newspapers on the Internet.
4. If U.S. persons wish to engage in activities that come within the scope of the General License, they can simply proceed to do so. They do not have to make an application to OFAC for a “specific license,” and do not have to notify OFAC of their activities.

5. Permissible Cuban Parties to Publishing Transactions Under the General License

(a) United States persons can enter into the newly authorized transactions under the General License with Cuban “academic and research institutions,” and their personnel, even if they are considered to be part of the Government of Cuba by OFAC.

(b) In addition, a U.S. person can enter into the newly authorized transactions with any other Cuban person or institution that is not classified as part of the “Government of Cuba” by the General License. For purposes of excluding them from the scope of the General License, the General License defines the “Government of Cuba” to mean:

(i) the state and the Government of Cuba, any political subdivision thereof, and “any agency or instrumentality” of the Government or its political subdivisions, and their personnel, with the exception of “academic and research institutions.” The General License does not define “agency or instrumentality;”

(ii) any person or institution that is acting, directly or indirectly, on behalf of the “Government of Cuba” in the publishing transaction; and

(iii) any person who occupies the following positions in Cuba, whether or not they are acting on behalf of the “Government of Cuba” in the publishing transaction:

Ministers and Vice-ministers; members of the Council of State, and the Council of Ministers; members and employees of the National Assembly of People’s Power; members of any provincial assembly; local sector chiefs of the Committees for the Defense of the Revolution; Director Generals and sub-Director Generals and higher of all Cuban ministries and state agencies; employees of the Ministry of the Interior (MININT); employees of the Ministry of Defense (MINFAR); secretaries and first secretaries of the Confederation of Labor of Cuba (CTC) and its component unions; chief editors, editors and deputy editors of Cuban state-run media organizations and programs, including newspapers, television, and radio; members and employees of the Supreme Court (Tribunal Supreme Nacional); members of the Politburo; the Central Committee; Department Heads of the Central Committee; employees of the Central Committee; secretary and first secretary of the provincial Party central committees; and employees of the Department of Justice.
(c) To reiterate, U.S. persons can enter into the newly authorized transactions with any Cuban academic and research institution, and its personnel, even if the institution is part of the Government of Cuba, but cannot otherwise enter into the transactions with the “Government of Cuba” as defined by the General License.

(d) Even if a Cuban individual is employed by the “Government of Cuba,” a U.S. person can enter into the newly authorized transactions with that person if the Cuban is acting in his private or individual capacity, and not on behalf of the Government of Cuba, provided that the person is not on the list of excluded officials.

6. Commissioning the Creation of New Written Publications

One of the General License’s most significant innovations is that, for the first time, OFAC has allowed U.S. publishers to commission and to pay advances for the creation of new manuscripts, books, journals and newspapers, “to the extent consistent with industry practice.”

For example, a U.S. publisher can contract with the University of Havana to prepare an encyclopaedia on Cuban history that the U.S. company will publish, and can pay an advance to the University to engage in the necessary work. If consistent with industry practice, the U.S. publisher can pay the University for related research costs.

In contrast to the General License, the Free Trade In Ideas Act, as construed by OFAC, only applies to informational materials already in existence. Therefore, the Act, as construed by OFAC, does not permit U.S. persons to commission, or finance, the creation of new informational products. Rather, U.S. persons may purchase the right to publish a work only after it exists at least in manuscript form. This has been one of the most serious limitations of the Free Trade In Ideas Act.

7. Substantive Collaboration

Another important innovation is that the General License permits the substantive “collaboration” of U.S. persons and Cubans in the creation of new manuscripts, books, journals, and newspapers, when incident to a publishing activity. The General License authorizes U.S. persons to engage in the activity of “collaborating on the creation and enhancement of written publications,” when “necessary and ordinarily incident” to the publishing of written publications.

For example, the General License allows a U.S. publisher to commission the joint creation of a book by a Cuban scholar and a U.S. scholar, and to pay advances to both.

This too represents an advance over the Free Trade In Ideas Act as construed by OFAC. OFAC’s position has been that the Act does not modify the CACR’s prohibition against U.S. and Cuban persons collaborating on the creation of a new work. OFAC considers the CACR’s prohibition against collaboration applicable not only to the
creation of an entirely new work but even to a U.S. person’s “substantive or artistic alteration or enhancement” of a Cuban’s existing work. According to OFAC, only the General License modifies the CACR’s prohibition against collaboration.

8. Using Cuban Publishing Houses or Translators

The General License authorizes U.S. persons, in connection with their publishing or marketing activities, “to engage the services of publishing houses or translators in Cuba,” provided the work is primarily for the dissemination in Cuba.

Although not specified in the General License, it is our understanding that OFAC considers a work to be “primarily” for dissemination in Cuba if more than 50% of its copies will be distributed there. The balance could be sold or distributed by the U.S. publisher in the United States or anywhere else outside of Cuba, if desired.

It is not clear how this 50% rule would be applied to electronic publications. However, it seems reasonable to conclude that the “primarily” disseminated in Cuba requirement would be satisfied if the website is administered in Cuba, and is a .cu” website.

When viewed in conjunction with the General License’s provision authorizing the commission of new works, this provision takes on added dimensions. For example, it should be possible for a U.S. publisher to pay a Cuban writer to write a book and pay a non-excluded Cuban publishing house to publish and sell the Cuban’s book “primarily” in Cuba, with other sales to be made outside of Cuba.

This provision also covers transactions that simply involve Cubans providing translation services, or simply providing printing services, provided, in both instances, that the informational product that results from these activities is distributed “primarily” in Cuba.

9. Other Publishing Transactions

In detailing the above and certain other activities as coming within its scope, the General License does not necessarily state the full scope of authorized activities. Rather, the General License explicitly provides that the General License covers all “other transactions necessary and ordinarily incident to the publishing and marketing of written publications.”

10. The General License Does Not Authorize Travel to Cuba

The General License does not authorize travel to Cuba. Rather, U.S. persons wishing to travel to Cuba in order to pursue the authorized publishing activities must apply to OFAC for specific licenses.

11. Editorial and Related Activities
The General License expressly authorizes:

- augmenting written publications through the addition of items such as photographs, artwork, translation and explanatory text;

- substantive editing of written publications; and

- creating or undertaking a marketing campaign to promote a written publication.

In our view, the Free Trade In Ideas Act also authorizes these activities. In 1993, OFAC issued a number of confusing and contradictory interpretations of the Free Trade In Ideas Act that some read as taking a contrary view. However, in 1994, OFAC retreated from its apparent position in important respects. OFAC then expressly acknowledged that, under the Free Trade In Ideas Act:

- U.S. publishers can make suggestions to the Cuban author for improvement of an already existing manuscript. The suggestions can relate to the author’s substantive treatment of the manuscript’s subject, as well as to the author’s style or form. This type of “collaborative interaction” is permissible if it is not so extensive that it results in “co-authorship or the equivalent thereof;”

- Style and copy editing is permissible; and

- U.S. publishers can translate the work, and publish either literal or idiomatic translations.

In our view, there is also no reasonable doubt that, under the Free Trade In Ideas Act, U.S. publishers can engage in marketing campaigns to promote works they publish or to promote imported works they distribute. Arguably, a different question would be posed were a U.S. marketing firm simply to offer marketing services to the Cuban publisher of a work.

12. Free Trade In Ideas Act

As noted, the General License does not purport to supersede or limit the Free Trade In Ideas Act, which is applicable to transactions with the “Government of Cuba,” as well as non-governmental Cuban institutions and persons. Therefore, when dealing with the “Government of Cuba,” U.S. persons still can engage in all the activities authorized by the Act, even though they cannot engage in the additional publishing activities made permissible only by the General License.

In brief, the Free Trade In Ideas Act authorizes U.S. persons to
• Purchase or license the right to reproduce and publish informational materials that already exist at the time of the contract;

• Import copies of informational products for distribution;

• Pay the Cuban party, whether it is the Government of Cuba or a private individual or institution, for the right to publish or distribute informational materials;

• Translate the works;

• Market works that the U.S. person publishes or imports;

• Obtain, and pay for, worldwide rights, as well as simply United States rights; and

• Publish and distribute the work in electronic form (for example, on a website), as well as in paper format.

However, as noted, OFAC takes the position that the Free Trade In Ideas Act does not permit U.S. persons to engage in transactions with respect to works not already in existence, including entering into contracts for the creation of new works. Additionally, OFAC maintains that the Free Trade In Ideas Act does not permit U.S. persons to obtain, or pay for, the right to make any “substantive or artistic alteration or enhancement” of the informational material.
§ 615.577 Authorised transactions necessary and ordinarily incident to publishing.

(a) To the extent that such activities are not exempt from this part, and subject to the restrictions set forth in paragraphs (b) through (d) of this section, persons subject to the jurisdiction of the United States are authorized to engage in all transactions necessary and ordinarily incident to the publishing and marketing of manuscripts, books, journals, and newspapers (collectively, ‘‘written publications’’), in paper or electronic format. This section does not apply if the parties to the transactions described in this paragraph include the Government of Cuba. For the purposes of this section, the term ‘‘Government of Cuba’’ includes the state and the Government of Cuba, as well as any political subdivision, agency, or jurisprudence thereof, including the Central Bank of Cuba; any person occupying the positions identified in §615.570(a)(3); employees of the Ministry of Justice; and any person acting or purporting to act directly or indirectly on behalf of any of the foregoing with respect to the transactions described in this paragraph. For the purposes of this section, the term ‘‘Government of Cuba’’ does not include any academic and research institutions and their personnel. Pursuant to this section, the following activities are not prohibited, provided that persons subject to the jurisdiction of the United States ensure that they are not engaging, without specific authorization, in the activities identified in paragraph (d) of this section:

(1) Commissioning and making advance payments for identifiable written publications not yet in existence, to the extent consistent with industry practice;

(2) Collaborating on the creation and enhancement of written publications;

(3) Augmenting written publications through the addition of items such as photographs, artwork, translation, and explanatory text;

(4) Substantive editing of written publications;

(b) This section does not authorize transactions involving the provision of goods or services not necessary and ordinarily incident to the publishing and marketing of written publications as described above. For example, this section does not authorize persons subject to the jurisdiction of the United States:

(1) To provide or receive individualized or customized services (including, but not limited to, accounting, legal, design, or consulting services), other than those necessary and ordinarily incident to the publishing and marketing of written publications, even though such individualized or customized services are delivered through the use of information and informational materials;

(2) To create or undertake for any person a marketing campaign with respect to any service or product other than a written publication, or to create or undertake a marketing campaign of any kind for the benefit of the Government of Cuba;

(3) To engage in the exportation or importation of goods, other than information and informational materials, to or from Cuba;

(4) To operate a publishing house, sales outlet, or other office in Cuba;

(5) To engage in transactions related to travel to, from and within Cuba.

(c) This section does not authorize persons subject to the jurisdiction of the United States to engage the services of publishing houses or translators in Cuba unless such activity is primarily for the dissemination of written publications in Cuba.

(d) This section does not authorize:

(1) Transactions for the development, production, design, or marketing of software;

(2) Transactions for the development, production, design, or marketing of technology specifically controlled by the International Traffic in Arms Regulations, 22 CFR parts 120 through 130 (ITAR), the Export Administration Regulations, 15 CFR parts 730 through 774 (EAR), or the Department of Energy Regulations set forth at 10 CFR part 810.

(3) The exportation of information or technology subject to the authorization requirements of 10 CFR part 810, or Restricted Data as defined in section 11 y. of the Atomic Energy Act of 1954, as amended, or of other information, data, or technology the release of which is controlled under the Atomic Energy Act and regulations therein;

(4) The exportation of information subject to license application requirements under the EAR. These EAR license application requirements cover not only the exportation of information controlled on the Commerce Control List, 15 CFR part 744, but also the exportation of any information subject to the EAR where a U.S. person knows or has reason to know that the information will be used, directly or indirectly, with respect to certain nuclear, missile, chemical and biological weapons, and nuclear-maritime end-uses. In addition, U.S. persons are precluded from exporting any information subject to the EAR to certain restricted end-users, as provided in the Commerce Department’s end-use and end-use based controls set forth at 15 CFR part 744;

(5) The exportation of information subject to licensing requirements under the ITAR, or exchanges of information that are subject to regulation by other government agencies.

(e) Specific licenses may be issued on a case-by-case basis authorizing the travel-related transactions set forth in §615.560(c) for purposes necessary and ordinarily incident to the publishing and marketing of written publications.