

## THE CUBAN ADJUSTMENT ACT IN THE WAKE OF THE UNITED STATES' RESTORED DIPLOMATIC RELATIONS WITH CUBA

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*"I can tell you that little island is a jewel; that is, before communism set in. And I believe with all my heart that . . . many Cubans will return, because they are a proud people. They love their country with a fierce passion the likes of which I don't believe I have ever seen."<sup>1</sup>*

### I. INTRODUCTION

At the time Representative Frank Chelf made this statement in 1966, Fidel Castro was in power for only seven years, and it appeared that Cuba would shortly regain its freedom from communism.<sup>2</sup> Communism in Cuba, however, has continued for over fifty years.<sup>3</sup> The United States has been a sanctuary, in a sense, for Cubans escaping political oppression and human rights violations.<sup>4</sup> The Cuban Adjustment Act (CAA or the Act) was enacted in 1966 to address the special circumstances of Cubans immigrating to the United States.<sup>5</sup> The Act has served both as a remedy for Cubans fleeing oppression as well as a symbol of the United States' opposition to communism. The last fifty years since the enactment of the CAA have generally been filled with tension and hostility between the two nations.

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<sup>1</sup> *Adjustment of Status for Cuban Refugees: Hearings on H.R. 15182, H.R. 15183, H.R. 16908, H.R. 10808, and H.R. 13393 Before the H. Comm. on the Judiciary*, 89th Cong. 23 (1966) (statement of Rep. Frank Chelf, Member, H. Comm. on the Judiciary) [hereinafter *Hearings on the Adjustment of Status for Cuban Refugees*].

<sup>2</sup> *Id.* at 4 ("Our goal and strong desire is that Cuba shall be freed from Communist domination and shall return again to the free world family of nations.").

<sup>3</sup> *Cuba Country Profile*, BBC NEWS, <http://www.bbc.com/news/world-latin-america-19583447> (last updated Aug. 27, 2017).

<sup>4</sup> See *Cuban Immigrants*, IMMIGRATION TO THE UNITED STATES, <http://immigrationtounitedstates.org/453-cuban-immigrants.html> (last visited Feb. 16, 2017).

<sup>5</sup> Cuban Adjustment Act, Pub. L. No. 89-732, 80 Stat. 1161 (1966) (codified as amended at 8 U.S.C. § 1255 (2012)).

Until recently, the United States did not have diplomatic relations with Cuba. The United States and Cuba officially restored diplomatic relations, however, on July 20, 2015, when each country's embassy was re-established.<sup>6</sup> This change in diplomatic policy has already had far-reaching implications for the United States' immigration policy towards Cuba, with the end of the Wet Foot, Dry Foot Policy.<sup>7</sup> This policy allowed Cubans who reached the United States' shore to stay in the United States and adjust their status to permanent residence under the CAA the following year, whereas those who did not reach the shore were returned to Cuba unless they demonstrated fear of persecution.<sup>8</sup> The abandonment of this special immigration law for Cuban immigrants signals the potential end of the CAA.

This Comment will focus on the CAA in light of the restored diplomatic relations between the United States and Cuba. Part II of the Comment will discuss the historical background between the two nations, which led to the enactment of the CAA in 1966. It will then discuss Congress's intent in enacting the Act. Part III will focus on recent events between the United States and Cuba and whether restored relations have affected the number of Cubans entering the United States. Additionally, it will review the bills in Congress that oppose the CAA. Part IV will discuss the arguments against the CAA by members of Congress as well as from other Latin American nations. Part V will discuss the reasons why the CAA should not be repealed by reviewing human rights violations in Cuba. This section will find that the purpose of the CAA is still served today despite renewed diplomatic relations. Part VI will discuss the future of the CAA. Lastly, Part VII will conclude this Comment and briefly examine how Donald Trump's Administration could potentially affect the CAA. Ultimately, this Comment will argue that the CAA should not be repealed until Cuba becomes a democracy or until human rights in the nation significantly improve. Other laws and policies regarding Cuban migration into the United States fall outside the scope of this Comment.

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<sup>6</sup> *Charting a New Course on Cuba*, White House, <https://www.whitehouse.gov/issues/foreign-policy/cuba> (last visited Sept. 12, 2016) [hereinafter *Charting a New Course on Cuba*].

<sup>7</sup> Karen DeYoung, *Obama Ending Special Immigration Policy for Migrants Fleeing Cuba*, WASHINGTON POST, (Jan. 12, 2017), [https://www.washingtonpost.com/world/national-security/obama-ending-wet-foot-dry-foot-policy-allowing-cubans-reaching-us-soil-to-stay-and-receive-residency/2017/01/12/21bbaac2-d912-11e6-b8b2-cb5164beba6b\\_story.html?utm\\_term=.ecd9a1400907](https://www.washingtonpost.com/world/national-security/obama-ending-wet-foot-dry-foot-policy-allowing-cubans-reaching-us-soil-to-stay-and-receive-residency/2017/01/12/21bbaac2-d912-11e6-b8b2-cb5164beba6b_story.html?utm_term=.ecd9a1400907).

<sup>8</sup> RUTH ELLEN WASEM, CUBAN MIGRATION TO THE UNITED STATES: POLICY AND TRENDS, CONG. RESEARCH SERV., (2009), <https://fas.org/sfp/crs/row/R40566.pdf>.

## II. HISTORY OF THE CAA AND ITS LEGISLATIVE INTENT

A. *The Cuban Revolution and Its Effect on the United States*

After years of fighting for Cuba's freedom from General Furgencio Batista's dictatorship, Fidel Castro's revolutionary forces assumed control in Havana when Batista fled on January 1, 1959.<sup>9</sup> The United States' fears regarding the stability of its businesses was confirmed on July 5, 1960 when Cuba nationalized all the United States' businesses and commercial property in Cuba.<sup>10</sup> Tensions increased on October 19 when the Eisenhower Administration announced a partial embargo on trade with Cuba.<sup>11</sup> A month later, thousands of unaccompanied Cuban children came to the United States, establishing Operation Pedro Pan.<sup>12</sup> Differences between the two nations appeared irreconcilable, and therefore, on January 3, 1961, the United States broke diplomatic relations with Cuba.<sup>13</sup> On April 17, Cuban exiles landed in Playa Girón.<sup>14</sup> Their invasion was unsuccessful and by April 19, Castro announced victory.<sup>15</sup> By February 1962, the United States expanded its embargo against Cuba to all trade except for non-subsidized food and medicine.<sup>16</sup> Tensions between Cuba and the United States rose to an all-time high in October of that year when the United States found Soviet nuclear missiles in Cuba.<sup>17</sup> The Cuban Missile Crisis was resolved when the Soviet Union removed the missiles in exchange for the United States removing missiles from Turkey.<sup>18</sup>

Between January of 1959 and October of 1962, nearly 250,000 Cubans escaped Castro's communist regime and fled to the United States.<sup>19</sup> In 1965, Castro announced that Cubans were free to immigrate to the United States through the Port of Camarioca.<sup>20</sup> Almost 3,000 Cubans made it to the United

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<sup>9</sup> JANE FRANKLIN, *CUBA AND THE U.S. EMPIRE: A CHRONOLOGICAL HISTORY* 18 (Monthly Review Press 2016).

<sup>10</sup> *Id.* at 26.

<sup>11</sup> *Id.* at 31.

<sup>12</sup> Operation Pedro Pan brought a total of 14,048 children to the United States by October 1962. Steven J. Green, *Chronology of U.S.-Cuba Relations*, FLA. INT'L UNIV., <https://cri.fiu.edu/us-cuba/chronology-of-us-cuba-relations> (last visited Sept. 7, 2016).

<sup>13</sup> FRANKLIN, *supra* note 9, at 34.

<sup>14</sup> This historic event is commonly known as the Bay of Pigs Invasion. FRANKLIN, *supra* note 9, at 40.

<sup>15</sup> *Id.* at 40–41.

<sup>16</sup> *Id.* at 49.

<sup>17</sup> *Cuban Missile Crisis*, HISTORY, <http://www.history.com/topics/cold-war/cuban-missile-crisis> (last visited Jan. 3, 2016).

<sup>18</sup> *Timeline: US-Cuba Relations*, BBC NEWS (Oct. 11, 2012), <http://www.bbc.com/news/world-latin-america-12159943> [hereinafter *Timeline: US-Cuba Relations*].

<sup>19</sup> Green, *supra* note 12.

<sup>20</sup> *Id.*

States between October 10 and November 15.<sup>21</sup> The Camarioca boatlift eventually led to an air bridge between Varadero, Cuba and Miami, Florida, known as “Freedom Flights.”<sup>22</sup> As a result of Cuban immigration into the United States, Congress enacted the CAA in 1966.<sup>23</sup>

#### B. *Enactment of the CAA*

The CAA was enacted by the Senate and House of Representatives on November 2, 1966.<sup>24</sup> The CAA provides:

Notwithstanding the provisions of section 245(c) of the Immigration and Nationality Act, the status of any alien who is a native or citizen of Cuba and who has been inspected and admitted or paroled into the United States subsequent to January 1, 1959 and has been physically present in the United States for at least one year, may be adjusted by the Attorney General, in his discretion and under such regulations as he may prescribe, to that of an alien lawfully admitted for permanent residence if the alien makes an application for such adjustment, and the alien is eligible to receive an immigrant visa and is admissible to the United States for permanent residence.<sup>25</sup>

The original CAA required the native or citizen of Cuba to be physically present in the United States for at least two years, but the Act was later amended to require only one year.<sup>26</sup>

#### C. *Legislative Intent Behind the CAA*

The CAA was designed to welcome Cubans and to facilitate their assimilation into the United States.<sup>27</sup> Additionally, the Act demonstrated the “desire of the United States to play a full and sympathetic role as a country of asylum for refugees from communism.”<sup>28</sup> Congress was confident that other nations would understand this “special help” was being given for “humanitarian and practical reasons.”<sup>29</sup> Congress also made clear that the adjustment for Cuban refugees in no way changed the United States’ policy of opposition to the Communist regime in Cuba.<sup>30</sup> This statute was enacted

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<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> FRANKLIN, *supra* note 9, at 81.

<sup>24</sup> Cuban Adjustment Act, Pub. L. No. 89-732, 80 Stat. 1161 (1966) (codified as amended at 8 U.S.C. § 1255 (2012)).

<sup>25</sup> *Id.*

<sup>26</sup> Compare 8 U.S.C. § 1255 (2012), with Cuban Adjustment Act, Pub. L. No. 89-732, 80 Stat. 1161 (1966).

<sup>27</sup> 2016 Legis. Bill Hist. FL S.M. 1642.

<sup>28</sup> *Hearings on the Adjustment of Status for Cuban Refugees*, *supra* note 1, at 4.

<sup>29</sup> *Id.*

<sup>30</sup> *Id.* at 5.

to benefit Cuban refugees; however, other Cubans could also be granted adjustment so long as they qualified under the Act's terms.<sup>31</sup> Congress intended to create an open-ended adjustment policy for Cuban immigrants.<sup>32</sup>

The CAA allows natives or citizens of Cuba to apply for adjustment of status, a term of art referring to the process by which a temporary immigrant within the United States applies to become a lawful permanent resident.<sup>33</sup> Cuban immigrants specifically are adjusted to permanent residents if they have been present in the United States for a year, have been admitted or paroled, and are admissible as immigrants.<sup>34</sup> The hearings on the CAA, prior to its enactment, demonstrated the difficulty Cuban refugees faced in obtaining a permanent visa by leaving the United States and applying at a United States consular office in another country.<sup>35</sup> The cost of this process was often prohibitive for many Cubans.<sup>36</sup> The CAA served as a solution to this issue.<sup>37</sup> Despite the enactment of the Refugee Act of 1980<sup>38</sup>, Cubans have been processed under the CAA.<sup>39</sup>

In order to be recognized as a refugee under the Refugee Act, the individual must be located outside of the United States, be of special humanitarian concern to the United States, not be resettled in another country, and must be admissible to the United States.<sup>40</sup> In addition, the individual must demonstrate that he or she was persecuted or feared persecution "due to race, religion, nationality, political opinion, or

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<sup>31</sup> Charles Gordon et al., *Immigration Law and Procedure*, § 34.04 n.92 (Matthew Bender, Rev. ed. 2015) (citing *Matter of Masson*, 12 I. & N. Dec. 699, 700 (BIA 1968)).

<sup>32</sup> *Fed'n for Am. Immigration Reform v. Meese*, 643 F. Supp. 983, 987 (S.D. Fla. 1986) (citing *Hearings on the Adjustment of Status for Cuban Refugees*, *supra* note 1, at 15–18).

<sup>33</sup> See Cuban Adjustment Act, Pub. L. No. 89-732, 80 Stat. 1161 (1966) (codified as amended at 8 U.S.C. § 1255 (2012)); Immigration and Nationality Act § 245(a), 8 U.S.C. § 1255(a). See also Wasem, *supra* note 8, at 2.

<sup>34</sup> Green Card for a Cuban Native or Citizen, U.S. CITIZENSHIP & IMMIGRATION SERVS., <https://www.uscis.gov/greencard/caa> (last updated Jan. 12, 2017). The petitioner applying for adjustment of status bears the burden of proof to establish eligibility. Gordon, *supra* note 31, n.91. The grant of adjustment of status is considered to be "an extraordinary remedy to be granted only in meritorious cases." *Ibarra v. Swacina*, No. 09-22354-CIV-HUCK, 2009 U.S. Dist. LEXIS 113941, at \*4 (S.D. Fla. Dec. 3, 2009) (citing *Eide-Kahayon v. INS*, 86 F.3d 147, 150 (9th Cir. 1996)). Even if eligibility is established, adjustment of status may still be denied because the benefits of the Act are discretionary. Gordon, *supra* note 31, n.94 (citing *Matter of Mesa*, 12 I. & N. Dec. 432, 437–38 (BIA 1967)).

<sup>35</sup> *Hearings on the Adjustment of Status for Cuban Refugees*, *supra* note 1, at 4.

<sup>36</sup> *Id.*

<sup>37</sup> Since the end of the Wet Foot, Dry Foot policy, however, Cubans can be "admitted or paroled" under the CAA only if they enter the United States legally, such as through a visa or the use of a passport from another country.

<sup>38</sup> Refugee Act of 1980, Pub. L. No. 96-212, 94 Stat. 101.

<sup>39</sup> Gordon, *supra* note 31, n. 119.

<sup>40</sup> *Refugees*, U.S. CITIZENSHIP AND IMMIGRATION SERVS., <https://www.uscis.gov/humanitarian/refugees-asylum/refugees> (last updated May 25, 2016).

membership in a particular social group.”<sup>41</sup> The United States admitted 69,933 refugees in the 2015 fiscal year.<sup>42</sup> Similar to persons seeking to be recognized as refugees, those seeking asylum must also demonstrate that “they have suffered persecution or fear that they will suffer persecution due to race, religion, nationality, membership in a particular social group, [or] political opinion.”<sup>43</sup> Additionally, asylum seekers must file a Form I-589, otherwise known as an Application for Asylum and for Withholding of Removal, within one year of arrival in the United States.<sup>44</sup> Asylum seekers may apply for permanent residence one year after they are granted asylum.<sup>45</sup> Cuban immigrants benefit greatly from the CAA because they do not need to prove persecution.<sup>46</sup> In addition, Cubans who legally enter the country can become permanent residents one year after their arrival, whereas those seeking protection from other nations must first seek and gain asylum status and then wait one year to seek permanent residency.<sup>47</sup>

### III. THE CAA TODAY

#### A. *Restored Diplomatic Relations with Cuba*

The never-ending Cold War policy between the United States and Cuba seemed to finally thaw on December 17, 2014.<sup>48</sup> President Barack Obama and Cuba’s president, Raúl Castro, announced that both countries would begin to normalize diplomatic relations.<sup>49</sup> The failed policy of American isolation from Cuba motivated President Barack Obama’s new course in diplomatic relations with the island nation.<sup>50</sup> This policy sought to reestablish a democratic government in Cuba.<sup>51</sup> The Obama Administration continued to support democratic principles in Cuba, despite its policy change

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<sup>41</sup> *Id.*

<sup>42</sup> *FY15 Refugee Admissions Statistics*, U.S. DEP’T OF STATE (Dec. 31, 2015), <http://www.state.gov/j/prm/releases/statistics/251285.htm>.

<sup>43</sup> *Asylum*, U.S. CITIZENSHIP AND IMMIGRATION SERVS., <https://www.uscis.gov/humanitarian/refugees-asylum/asylum> (last updated May 12, 2017).

<sup>44</sup> *Id.*

<sup>45</sup> *Id.*

<sup>46</sup> *Compare* 8 U.S.C. § 1158 (b)(1)(B)(i) (2008), *with* Cuban Adjustment Act, Pub. L. No. 89-732, 80 Stat. 1161 (1966).

<sup>47</sup> *See* Cuban Adjustment Act, Pub. L. No. 89-732, 80 Stat. 1161 (1966); *Asylum*, U.S. CITIZENSHIP AND IMMIGRATION SERVS., <https://www.uscis.gov/humanitarian/refugees-asylum/asylum> (last updated May 12, 2017).

<sup>48</sup> *See Charting a New Course on Cuba*, *supra* note 6.

<sup>49</sup> *Id.* Negotiations prior to this announcement were kept secret, and were influenced and encouraged by Pope Francis. Danielle Renwick et. al, *U.S.-Cuba Relations*, COUNCIL ON FOREIGN RELATIONS, <http://www.cfr.org/cuba/us-cuba-relations/p11113> (last updated June 19, 2017).

<sup>50</sup> *Charting a New Course on Cuba*, *supra* note 6.

<sup>51</sup> *Id.*

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towards Cuba.<sup>52</sup> The Obama Administration stated that it still advocated for the respect of human rights, including the freedom of expression without fear.<sup>53</sup>

Since the announcement, there have been various progressive changes between the two nations. To begin with, Secretary of State, John Kerry, removed Cuba from the terrorism list.<sup>54</sup> In addition, on July 20, 2015, the Cuban Embassy reopened in Washington D.C. and the United States Embassy reopened in Havana, Cuba.<sup>55</sup> The reopening of the United States Embassy now allows American diplomats to engage with the Cuban people.<sup>56</sup> Another major event in normalizing diplomatic relations with Cuba was President Obama's historic visit to Cuba in 2016, taking place from March 20 to 22,<sup>57</sup> making him the first sitting president in almost ninety years to visit the island.<sup>58</sup> The lift of travel restrictions to Cuba and the establishment of charter flights between the two nations was one of the most recent steps to normalizing relations.<sup>59</sup> The first commercial flight from the United States to Cuba in over fifty years took place on August 31, 2016.<sup>60</sup>

#### B. *The End of the Wet Foot, Dry Foot Policy and Its Effects on the CAA*

Barack Obama, announced on January 12, 2017, that he had ended the Wet Foot, Dry Foot Policy<sup>61</sup> despite previous statements that his Administration would not change Cuban migration policy.<sup>62</sup> This policy, adopted in 1996 under Bill Clinton's Administration, allowed Cubans who reached American soil to remain and eventually become permanent residents

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<sup>52</sup> *FACT SHEET: United States-Cuba Relationship*, White House (Mar. 21, 2016), <https://www.whitehouse.gov/the-press-office/2016/03/21/fact-sheet-united-states-cuba-relationship> [hereinafter FACT SHEET].

<sup>53</sup> *Id.*

<sup>54</sup> *See Charting a New Course on Cuba*, *supra* note 6.

<sup>55</sup> *Id.*

<sup>56</sup> *Id.*

<sup>57</sup> *United States-Cuba One Year Anniversary of Re-established Diplomatic Relations*, U.S. DEP'T OF STATE (July 20, 2016), <https://2009-2017.state.gov/r/pa/prs/ps/2016/07/260306.htm>

<sup>58</sup> Barack Obama: 'Change is going to happen in Cuba', BBC NEWS (Mar. 21 2016), <http://www.bbc.com/news/world-latin-america-35856126>

<sup>59</sup> *Id.*

<sup>60</sup> Frances Robles, *Scheduled Flights to Cuba from U.S. Begin Again, Now with Jet Engines*, N.Y. TIMES (Aug. 31, 2016), <http://www.nytimes.com/2016/09/01/world/americas/cuba-us-first-flight-jetblue.html>.

<sup>61</sup> DeYoung, *supra* note 7.

<sup>62</sup> *See Sidebar: Re-establishment of Diplomatic Relations with Cuba*, U.S. DEPARTMENT OF STATE, <https://www.state.gov/s/d/rm/rls/perfrpt/2015/html/249702.htm> (last updated Nov. 16, 2015).

through the CAA, while those intercepted at sea were sent home.<sup>63</sup> American and Cuban diplomatic officials negotiated the end of this policy as another measure of diplomatic normalization.<sup>64</sup>

This change in policy occurred “to deal with Cubans arriving irregularly by land[] as well as sea.”<sup>65</sup> Jeh Johnson, Secretary of Homeland Security, announced during a press call that “[g]oing forward, those Cuban migrants who arrive in the United States illegally . . . will be subject to deportation consistent with our laws and our immigration enforcement priorities.”<sup>66</sup> The purpose of this major policy change is to similarly treat illegal Cuban migrants and other illegal immigrants from other countries.<sup>67</sup> In return, Cuba agreed to accept each Cuban migrant that enters the United States illegally if the United States commences a deportation proceeding in less than four years from the time the person left Cuba.<sup>68</sup>

As a result of this major policy change, Cuban migrants who now enter the country illegally will have to claim asylum like other immigrants; they will no longer be eligible under the CAA.<sup>69</sup> Cubans who enter the United States with a visa will probably continue to have a path to permanent residency under the terms of the CAA.<sup>70</sup> When asked if discretion should be exercised to stop granting parole to Cubans who enter the United States legally, however, a Department of Homeland Security official stated that “there is case law that limits [their] authority to grant or deny adjustment under [the CAA but] that is something that [they] will continue to consider and analyze moving forward.”<sup>71</sup> It is still too early to predict the full effects that the repeal of the Wet Foot, Dry Foot Policy will ultimately have on the CAA. This policy change, however, is arguably a strong signal that the CAA will soon be repealed. In fact, the Obama Administration suggested that Congress should repeal the CAA to normalize the American-Cuban

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<sup>63</sup> DeYoung, *supra* note 7.

<sup>64</sup> *Id.*

<sup>65</sup> Press Release, White House, *On-the-Record Press Call on Cuba Policy Announcement* (Jan. 12, 2017, 5:55 PM), <https://obamawhitehouse.archives.gov/the-press-office/2017/01/12/record-press-call-cuba-policy-announcement> [hereinafter *On-the-Record Press Call*].

<sup>66</sup> *Id.*

<sup>67</sup> *Id.*

<sup>68</sup> This four-year period is a result of a Cuban law that was enacted as a response to the CAA. *Id.* Cuba’s law states that after two years after a person leaves Cuba, he or she is considered to have effectively emigrated from Cuba. *Id.*

<sup>69</sup> *Id.*

<sup>70</sup> Nick Miroff, *Obama Has Axed Immigration Privileges for Cubans. Here’s How they May Try to Get Around It.*, WASHINGTON POST (Jan. 13, 2017), [https://www.washingtonpost.com/news/worldviews/wp/2017/01/13/obama-has-axed-immigration-privileges-for-cubans-heres-how-they-may-try-to-get-around-it/?utm\\_term=.94de8a27b2b2](https://www.washingtonpost.com/news/worldviews/wp/2017/01/13/obama-has-axed-immigration-privileges-for-cubans-heres-how-they-may-try-to-get-around-it/?utm_term=.94de8a27b2b2).

<sup>71</sup> *On-the-Record Press Call*, *supra* note 65.



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immigration relationship.<sup>72</sup>

C. *Fear that the CAA Will Be Repealed*

Cubans still living on the island fear that the CAA will soon be repealed and special refugee benefits will be taken away as a consequence of renewed diplomatic relations with Cuba.<sup>73</sup> They believe their opportunity to benefit from the CAA will soon come to an end as the United States and Cuba revise decades-old policies.<sup>74</sup> The number of Cubans entering the United States spiked shortly after President Obama's announcement of normalized diplomatic relations with Cuba.<sup>75</sup> By the end of the fiscal year 2015, 43,159 Cubans entered the United States, a seventy-eight percent increase from the 24,278 Cubans who entered in fiscal year 2014.<sup>76</sup> In fiscal year 2016, 56,406 Cubans entered the United States.<sup>77</sup> Unlike past Cuban immigration trends, large numbers of Cubans in 2015 were migrating to the United States by land.<sup>78</sup> Many Cubans opted to fly to Ecuador, travel through Central America, and then cross the Mexican border into the United States.<sup>79</sup> Specifically, the majority of recent Cuban refugees have entered through the United States Border Patrol's Laredo Sector in Texas.<sup>80</sup> Immigrating by land is considered less dangerous than crossing the ocean by boat or raft.<sup>81</sup> This method of immigration, however, became troublesome for several Latin American countries.<sup>82</sup> Central American nations closed their borders and, as a result, Cuban immigrants were stranded in pursuit of travelling to the United States.<sup>83</sup>

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<sup>72</sup> *Id.*

<sup>73</sup> See Miriam Jordan, *More Cubans Migrate to U.S.*, WALL ST. J. (Sept. 20, 2015, 9:12 PM), <http://www.wsj.com/articles/more-cubans-migrate-to-u-s-1442789321>.

<sup>74</sup> *Id.*

<sup>75</sup> The President made the announcement in December 2014. Jens Manuel Krogstad, *Surge in Cuban Immigration to U.S. Continued Through 2016*, PEW RES. CTR. (Jan. 13, 2017), <http://www.pewresearch.org/fact-tank/2016/08/05/cuban-immigration-to-u-s-surges-as-relations-warm/>. Between January and March 2015, 9,900 Cubans entered the United States. *Id.* This is more than double the amount that entered during the same period in 2014. *Id.* Pew Research seems to suggest, but does not directly state, that this announcement caused an increase of Cubans entering the United States. See *id.*

<sup>76</sup> *Id.*

<sup>77</sup> *Id.*

<sup>78</sup> See *id.*

<sup>79</sup> *Id.*

<sup>80</sup> *Id.*

<sup>81</sup> Jordan, *supra* note 73.

<sup>82</sup> See Franco Ordoñez, *U.S. Should End Special Treatment for Cubans, Costa Rican Minister Says*, MIAMI HERALD (Aug. 26, 2016, 4:20 PM), <http://www.miamiherald.com/news/nation-world/world/americas/cuba/article98137957.html>.

<sup>83</sup> Krogstad, *supra* note 75.

*D. Division in Congress*

The normalization of diplomatic relations between the United States and Cuba influenced various members of Congress to question the CAA. Representative Mario Diaz-Balart of Florida stated that concessions to the Castro regime put the future of the CAA in jeopardy.<sup>84</sup> In October of 2015, Representative Paul A. Gosar of Arizona introduced a bill that would repeal the CAA.<sup>85</sup> Representative Gosar argued that Cubans should not be treated differently from other immigrants after President Obama normalized relations with Cuba.<sup>86</sup> The bill states:

The Obama Administration has reestablished relations with Cuba . . . [T]herefore, the special treatment Cuban nationals receive under the Cuban Adjustment Act, the Immigration and Nationality Act, the Cuban Family Reunification Program[,] and the Wet Foot/Dry Foot policy are no longer applicable and fail the “urgent humanitarian reasons” and “significant public benefit” tests.<sup>87</sup>

The bill suggests that Cuban nationals should no longer receive preferential treatment and should instead be treated under the same immigration rules as other immigrants.<sup>88</sup>

On February 24, 2016, Senator Rene Garcia from the State of Florida introduced a Senate memorial, which urged Congress to review and revise the CAA to reflect the diplomatic changes that have occurred between the United States and Cuba since the enactment of the CAA.<sup>89</sup> The memorial argued that the CAA and other related Cuban immigration policies have to be revised because they were created at a time when the United States government did not recognize the Cuban government.<sup>90</sup> Shortly after, on March 23, 2016, Representative Blake Farenthold introduced H.R. 4847, a bill to repeal the CAA and limit the number of Cuban entrants eligible to receive refugee assistance.<sup>91</sup> This bill adopts the same language as sections 2, 3, and 4 of 114 H.R. 3818.<sup>92</sup> This bill, however, goes on even further to

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<sup>84</sup> Alfonso Chardy & Nora Gamez Torres, *U.S.-Cuba Diplomacy: Will It Jeopardize Green Cards?*, MIAMI HERALD (Jan. 12, 2015, 1:32 PM), <http://www.miamiherald.com/news/nation-world/world/americas/cuba/article6088452.html>.

<sup>85</sup> Kevin Penton, *House Bill Would Repeal Special Rights for Cubans in US*, LAW 360 (Oct. 27, 2015, 7:05 PM), <http://www.law360.com/articles/719429/house-bill-would-repeal-special-rights-for-cubans-in-us>.

<sup>86</sup> *See id.*

<sup>87</sup> Ending Special National Origin-Based Immigration Programs for Cubans Act of 2015, H.R. 3818, 114th Cong. § 2(a)(4) (2015).

<sup>88</sup> *Id.* § 2(b).

<sup>89</sup> 2016 Legis. Bill Hist. FL S.M. 1642.

<sup>90</sup> *Id.*

<sup>91</sup> Correcting Unfair Benefits for Aliens Act of 2016, H.R. 4847 114th Cong. (2016).

<sup>92</sup> *See id.*

eliminate special benefits given to Cubans under the Refugee Education Assistance Act of 1980, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, and the Immigration and Nationality Act.<sup>93</sup> There are additional bills that seek to eliminate the special benefits Cuban refugees receive once they enter the United States, but these bills would not repeal the CAA.<sup>94</sup>

Despite some opposition from members of Congress, the Obama Administration remained firm on its position towards the CAA. The United States Department of State announced that it had no plans to alter the CAA.<sup>95</sup> The Hispanic National Bar Association (HNBA) is concerned with American-Cuban rapprochement.<sup>96</sup> The HNBA established a task force to make recommendations to the HNBA on issues such as the CAA and the trade embargo against Cuba.<sup>97</sup>

#### IV. ARGUMENTS AGAINST THE CAA

##### A. *The CAA No Longer Serves Its Legislative Intent*

Critics of the CAA argue that the CAA no longer serves its original purpose.<sup>98</sup> The president of the Federation for American Immigration Reform, Dan Stein, argued that the CAA is an outdated remnant of the Cold War, and it no longer serves any national interest.<sup>99</sup> Moreover, others argue

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<sup>93</sup> *Id.*

<sup>94</sup> In December of 2015, Representative Carlos Curbelo of Florida introduced H.R. 4247, designed to remove automatic refugee benefits given to Cubans. See Carolina Bolado, *Miami Congressman Pitches Edits to Cuban Immigrant Policy*, LAW 360 (Dec. 16, 2015, 9:55 PM), <http://www.law360.com/articles/738985/miami-congressman-pitches-edits-to-cuban-immigrant-policy>. This bill, like H.R. 4847, amends the Refugee Education Assistance Act of 1980, the Personal Responsibility and Work Opportunity Act of 1996, and the Immigration and Nationality Act by striking language that contains the word “Cuba” or “Cuban.” See Cuban Immigrant Work Opportunity Act of 2015, H.R. 4247 114th Cong. (2015). In addition, Senator Marco Rubio proposed an end to Cuban immigrant’s automatic refugee status, which currently provides Cubans with aid immediately upon arrival. See James Rosen, *Sen. Marco Rubio Seeks End to Special Refugee Status for Cuban Immigrants*, MIAMI HERALD (Apr. 13, 2016, 7:22 PM), <http://www.miamiherald.com/news/politics-government/article71684157.html>. This bill is identical to H.R. 4847, only Senator Rubio introduced this to the Senate Committee on Finance. See Cuban Immigrant Work Opportunity Act of 2016, S. 2441 114th Cong. (2016). The implications of these bills are beyond the scope of this Comment.

<sup>95</sup> *Re-establishment of Diplomatic Relations with Cuba*, U.S. DEP’T OF STATE, <https://www.state.gov/s/d/rm/rls/perfrpt/2015/html/249702.htm> (Nov. 16, 2015). Since this statement was made, however, the Obama Administration did change its migration policy towards Cuba by removing the Wet Foot, Dry Foot Policy. *On-the-Record Press Call*, *supra* note 65.

<sup>96</sup> Monika Gonzalez Mesa, *Hispanic Bar Forms Cuba Task Force*, MIAMI DAILY BUS. REV., Aug. 31, 2016, at A1.

<sup>97</sup> *Id.*

<sup>98</sup> Penton, *supra* note 85.

<sup>99</sup> *Id.*

that since the Obama Administration reestablished relations with Cuba, the CAA fails to serve “urgent humanitarian reasons.”<sup>100</sup> When the CAA was enacted, the United States did not recognize the communist government of Cuba, travel between the nations was restricted, and the nations had no diplomatic relations.<sup>101</sup> Under Obama’s policy towards Cuba, the Cuban government is now recognized, diplomatic relations have been renewed, and travel is less restricted.<sup>102</sup> Some argue these changes have not been reflected within the CAA.<sup>103</sup> According to Representative Gosar, the death of Fidel Castro, on November 29, 2016, should also signal the end of the CAA.<sup>104</sup>

B. *Various Latin American Countries Believe the CAA Should be Repealed*

In 2015 and 2016, thousands of Cuban immigrants traveled to Latin American countries and then gradually to Mexico to cross the border into the United States.<sup>105</sup> As a result, those nations have faced the difficulty of dealing with this Cuban migration crisis.<sup>106</sup> Following the orders from the Obama Administration, these nations have improved enforcement efforts and tightened their borders in an effort to not encourage this type of travel.<sup>107</sup> Nicaragua, Costa Rica, and Panama closed their borders to Cubans, creating a backlog of Cubans in Colombia.<sup>108</sup> The Colombian government announced that it would deport Cubans, either voluntarily or involuntarily.<sup>109</sup>

The “foreign ministers of Colombia, Costa Rica, Ecuador, El Salvador, Guatemala, Mexico, Nicaragua, Panama, and Peru[,]” in a letter to Secretary of State John Kerry, expressed their concern for the Cuban migration crisis in Latin America.<sup>110</sup> The letter requested a high-level meeting to discuss the CAA.<sup>111</sup> The foreign minister of Costa Rica, Manuel González, argued that

<sup>100</sup> Cuban Immigrant Work Opportunity Act of 2016, H.R. 4847 114th Cong. (2016).

<sup>101</sup> 2016 Legis. Bill Hist. FL S.M. 1642.

<sup>102</sup> *Id.*

<sup>103</sup> *Id.*

<sup>104</sup> See Press Release, Rep. Paul Gosar, Rep. Paul Gosar: “The End of Fidel Castro Should Signal the End of the Cuban Adjustment Act” (Nov. 29, 2016), <http://gosar.house.gov/press-release/rep-gosar-”-end-fidel-castro-should-signal-end-cuban-adjustment-act”> [hereinafter Rep. Gosar].

<sup>105</sup> Krogstad, *supra* note 75.

<sup>106</sup> See Jim Wyss, *Colombia Denies Airlift for Cuban Migrants, to Begin Deportations*, MIAMI HERALD (Aug. 2, 2016, 9:09 PM), <http://www.miamiherald.com/news/nation-world/world/americas/colombia/article93381367.html>.

<sup>107</sup> See Ordoñez, *supra* note 82.

<sup>108</sup> *Id.*

<sup>109</sup> *Id.*

<sup>110</sup> The Editorial Board, *Neighbors Question Cuba Migration Policy*, N.Y. TIMES (Aug. 31, 2016), [http://www.nytimes.com/2016/08/31/opinion/neighbors-question-cuba-migration-policy.html?\\_r=0](http://www.nytimes.com/2016/08/31/opinion/neighbors-question-cuba-migration-policy.html?_r=0).

<sup>111</sup> *Id.*

the CAA is substantially responsible for attracting the unprecedented influx of Cubans entering Latin American countries on their way to reach the United States.<sup>112</sup> Furthermore, González stated that the influx of Cuban migrants “has cost [Costa Rica] millions of dollars—and millions of dollars that [they] don’t have available.”<sup>113</sup>

The Obama Administration did not schedule any meetings with the foreign ministers to discuss their concerns.<sup>114</sup> The Obama Administration stated that it would engage with these nations regarding the issue, and that it encouraged them to respect the human rights of the migrants.<sup>115</sup> Despite the foreign ministers’ plea to the United States to dispel of the CAA, John Kirby, Spokesperson for the United States Department of State, stated that “the Cuban Adjustment Act remained in place.”<sup>116</sup> Since the end of the Wet Foot, Dry Foot policy, it is expected that less Cubans will enter the country illegally.

## V. THE NEED TO MAINTAIN THE CAA

### A. *Human Rights Violations Are Still Prevalent in Cuba*

The Castros, originally Fidel Castro and now Raúl Castro, have been in power since 1959.<sup>117</sup> For over fifty years, Cuba has been an authoritarian state in which the only legal party is the Communist Party.<sup>118</sup> The CAA was partially motivated by the need to help Cubans escape the oppressive, communist government and this government’s violation of basic human rights.<sup>119</sup> Critics of the CAA state that conditions in Cuba have changed since the renewal of diplomatic relations with Cuba, and therefore, the purpose of the Act is no longer served.<sup>120</sup> The communist government, however, continues to restrict freedom of expression.<sup>121</sup> Those who choose

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<sup>112</sup> Ordoñez, *supra* note 82.

<sup>113</sup> *Id.*

<sup>114</sup> John Kirby, *Daily Press Briefing*, U.S. DEP’T OF STATE, (Aug. 30, 2016), <https://2009-2017.state.gov/r/pa/prs/dpb/2016/08/261362.htm>.

<sup>115</sup> *Id.*

<sup>116</sup> *Id.*

<sup>117</sup> Green, *supra* note 12.

<sup>118</sup> U.S. Department of State, *Cuba*, COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES FOR 2015, <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2015&dlid=253005#wrapper> [hereinafter CUBA COUNTRY REPORTS].

<sup>119</sup> *Hearings on the Adjustment of Status for Cuban Refugees*, *supra* note 1, at 4 (“[T]his special help to Cuban refugees is being given for purely humanitarian and practical reasons . . .”).

<sup>120</sup> See, e.g., Chardy & Torres, *supra* note 84. See also Ending Special National Origin-Based Immigration Programs for Cubans Act of 2015, H.R. 3818 114th Cong. § 2(a)(4) (2015); 2016 Legis. Bill Hist. FL S.M. 1642; Correcting Unfair Benefits for Aliens Act of 2016, H.R. 4847 114th Cong. (2016); *On-the-Record Press Call*, *supra* note 65.

<sup>121</sup> AMNESTY INTERNATIONAL ANNUAL REPORT, *Cuba 2016/2017*, <https://www.amnesty.org>.

to voice their concerns against the government are typically arrested and detained.<sup>122</sup> In 2015, the Cuban Commission for Human Rights and National Reconciliation (“CCDHRN”) documented over 8,600 detentions of government opponents and activists.<sup>123</sup> Some political activists are charged under laws covering “disrespect, dangerousness[,] and aggression[.]”<sup>124</sup> In various cases, these seemingly light offenses were enough to detain political activists for years. For instance, Iván Fernández Depestre and Emilio Planas Robert were charged of “dangerousness” and were sentenced to three and three-and-a-half years of imprisonment, respectively.<sup>125</sup> Another case that brought international attention was the arrest of Danilo Maldonado Machado. He was arrested for “disrespecting the leaders of the Revolution” by painting two pigs with the names “Raúl” and “Fidel.”<sup>126</sup> After ten months in jail, Maldonado was released.<sup>127</sup> Carolina Jiménez, America’s Deputy Director for Research at Amnesty International, stated, “[w]hat this story shows is . . . things have hardly changed in Cuba, where people are still being thrown in jail solely for peacefully exercising their right to freedom of expression.”<sup>128</sup> Political activists are also subject to being charged with potential dangerousness.<sup>129</sup> In these cases, a criminal act is not necessary, the state needs to show only “that the defendant has proclivity for crime[.]”<sup>130</sup>

#### 1. Freedom of Assembly Remains Restricted in Cuba.

Cuba’s constitution allows the right of assembly only if it meets the objectives of the socialist state.<sup>131</sup> In other words, Cuban citizens do not have the right of assembly to protest against the government.<sup>132</sup> The Cuban

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org/en/countries/americas/cuba/report-cuba/.

<sup>122</sup> *Id.*

<sup>123</sup> *Id.*

<sup>124</sup> *Id.*

<sup>125</sup> AMNESTY INTERNATIONAL ANNUAL REPORT, *Cuba 2014/15*, [https://www.amnestyusa.org/pdfs/AIR15\\_English.PDF](https://www.amnestyusa.org/pdfs/AIR15_English.PDF)

<sup>126</sup> *Cuba Must Release Graffiti Artist Jailed for Painting Castros’ Names on Pigs’ Back*, AMNESTY INTERNATIONAL, (Sept. 29, 2015, 2:50 PM), <https://www.amnesty.org/en/latest/news/2015/09/cuba-must-release-graffiti-artist-jailed-for-painting-castros-names-on-pigs-back/>.

<sup>127</sup> *Cuba Releases Street Artist Jailed for Painting Pigs with Names ‘Fidel’ and ‘Raúl’*, FOX NEWS WORLD (Oct. 21, 2015), <http://latino.foxnews.com/latino/news/2015/10/21/cuba-releases-street-artist-el-sexto-after-10-months-in-prison-pig-paintings/>.

<sup>128</sup> *Cuba Must Release Graffiti Artist Jailed for Painting Castros’ Names on Pigs’ Back*, AMNESTY INTERNATIONAL, (Sept. 29, 2015, 2:50 PM), <https://www.amnesty.org/en/latest/news/2015/09/cuba-must-release-graffiti-artist-jailed-for-painting-castros-names-on-pigs-back/>.

<sup>129</sup> CUBA COUNTRY REPORTS, *supra* note 118.

<sup>130</sup> *Id.*

<sup>131</sup> *Id.*

<sup>132</sup> *Id.*

government preemptively uses the detention of critics and political activists to preclude them from participating in marches, protests, or meetings.<sup>133</sup> For example, when Pope Francis visited Cuba, the Cuban government prevented dozens of activists from attending papal events.<sup>134</sup> On December 10, 2015, International Human Rights Day, authorities arrested over 100 activists in order to prevent activities on that day.<sup>135</sup> Unsurprisingly, the government did not approve public meetings to any human rights groups that were critical of the government.<sup>136</sup>

On occasion, the government organized mobs to counter those political activists who peacefully assembled.<sup>137</sup> The government encouraged these mobs to verbally taunt those protesting.<sup>138</sup> Political activists were physically assaulted at times or suffered property damage.<sup>139</sup> Government security officials who were present did not arrest those physically attacking the activists.<sup>140</sup> Cuba's government denies holding any political prisoners; however, the government has refused international humanitarian organizations and the United Nations access to its jails.<sup>141</sup> According to Marselha Gonçalves Margerin, Advocacy Director for the Americas at Amnesty International, Cuba is the only nation in the Americas that has not allowed the organization access to its jails.<sup>142</sup>

## 2. Cuban Citizens Face Arbitrary Arrests and Detentions As Well As Unjust Trial Procedures.

Cuban police are given wide discretion to “stop and question citizens, request identification, and carry out arrests and searches.”<sup>143</sup> They typically do not have to present arrest orders to justify the detentions.<sup>144</sup> Once arrested or detained, defendants do not receive timely notice of the crime they committed.<sup>145</sup> In 2015, there were multiple reports of detainees who were

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<sup>133</sup> *Cuba Events of 2015*, HUMAN RIGHTS WATCH, <https://www.hrw.org/world-report/2016/country-chapters/cuba> (last visited Sept. 16, 2016) [hereinafter HUMAN RIGHTS WATCH].

<sup>134</sup> CUBA COUNTRY REPORTS, *supra* note 118.

<sup>135</sup> *Id.*

<sup>136</sup> *Id.*

<sup>137</sup> *Id.*

<sup>138</sup> *Id.*

<sup>139</sup> *Id.*

<sup>140</sup> CUBA COUNTRY REPORTS, *supra* note 118.

<sup>141</sup> *Id.*

<sup>142</sup> Roque Planas, *These are the Major Human Rights Issues in Cuba and the Castro Government's Response*, HUFFINGTON POST (Mar. 22, 2016), [http://www.huffingtonpost.com/entry/cuba-human-rights-castro-government\\_us\\_56f12d7fe4b03a640a6b7e30](http://www.huffingtonpost.com/entry/cuba-human-rights-castro-government_us_56f12d7fe4b03a640a6b7e30).

<sup>143</sup> CUBA COUNTRY REPORTS, *supra* note 118.

<sup>144</sup> HUMAN RIGHTS WATCH, *supra* note 133.

<sup>145</sup> CUBA COUNTRY REPORTS, *supra* note 118.

not given notice of their criminal charge within the 168-hour period in which detainees must be informed of the basis for their arrest.<sup>146</sup> Officials may interrogate detainees at any time during their detention and do not give detainees the right to request the presence of counsel during the interrogation.<sup>147</sup> Additionally, there were reports of detainees who were allowed to meet with counsel only minutes before their trial.<sup>148</sup> In addition to unjust treatment when detained, the government often denied political activists due process rights.<sup>149</sup> The government held some politically motivated trials in secret, rather than giving detainees the right to a public trial.<sup>150</sup> Cuban officials often quickly concluded these cases and did not give the press access.<sup>151</sup>

### 3. Cuban Government Restricts Freedom of Press.

In addition to the government's control over individuals' freedom of speech and freedom of assembly, the government also has full control over the press. The United States' Bureau of Democracy, Human Rights, and Labor found that the Cuban government owned every print and broadcast media outlet.<sup>152</sup> Furthermore, the Cuban government rejects any form of independent journalism.<sup>153</sup> Those journalists who report independently face the risk of government harassment, including detention and physical abuse.<sup>154</sup> Cuba also censors all forms of printed materials that criticize the communist government or are "counterrevolutionary."<sup>155</sup> The government has gone as far as to prevent independent libraries from receiving materials from abroad.<sup>156</sup> Foreign newspapers were typically available only in tourist areas.<sup>157</sup> Aside from black market facilities, the communist government controlled all access to the Internet in 2015 and it censored online content.<sup>158</sup> Despite the increase in computer centers in which Cuban citizens can now use the Internet, the government continues to prevent citizens from total access to the worldwide web.<sup>159</sup> It is reported that authorities block access

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<sup>146</sup> *Id.*

<sup>147</sup> *Id.*

<sup>148</sup> *Id.*

<sup>149</sup> *Id.*

<sup>150</sup> *Id.*

<sup>151</sup> CUBA COUNTRY REPORTS, *supra* note 118.

<sup>152</sup> *Id.*

<sup>153</sup> *Id.*

<sup>154</sup> *Id.*

<sup>155</sup> *Id.*

<sup>156</sup> *Id.*

<sup>157</sup> CUBA COUNTRY REPORTS, *supra* note 118.

<sup>158</sup> *Id.*

<sup>159</sup> *Id.*



to websites that criticize the government and review the browsing history of users.<sup>160</sup>

4. These Ongoing Human Rights Violations Are Just As Prevalent Today As They Were When the CAA Was Enacted.

Despite claims that today's Cuban immigrants are leaving solely for economic opportunities, today's Cuban immigrants, just like those immigrants who left fifty years ago, are also escaping oppression in search for freedom in the United States.<sup>161</sup> The purpose of the CAA was to serve as a form of relief to Cubans who wished to escape tyranny from the communist government.<sup>162</sup> If oppression still exists in Cuba due to its authoritarian government and Cubans are robbed of their basic human rights such as freedom of speech and freedom of assembly, then the purpose of the CAA is still met in present day.

B. *Restored Diplomatic Relations Do Not Frustrate the Purpose of the CAA.*

Restored diplomatic relations have not ended human rights abuses and detentions of political activists. Congressmen who propose that the CAA be repealed simply because the two nations have renewed relations assume that renewed relations drastically changed the state of Cuba in regards to human rights. For over fifty years, the communist government of Cuba has violated the most basic human rights of its citizens.<sup>163</sup> To believe that restored diplomatic relations will change this overnight is overly optimistic and unrealistic. In fact, shortly before Barack Obama's visit to Cuba in March 2016, the Cuban government detained roughly fifty activists participating in a protest.<sup>164</sup> The Obama Administration clarified that the United States was still committed to universal human rights and supports democratic principles in Cuba.<sup>165</sup> The Office of the Press Secretary released the following statement: "We remain convinced the Cuban people would be best served by being able to freely choose their leaders, express their ideas without fear, practice their faith, hold institutions accountable, and participate in civil society groups."<sup>166</sup> This policy is consistent with the purpose of the CAA.

Representative Paul Gosar, who argued that Fidel Castro's death calls

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<sup>160</sup> *Id.*

<sup>161</sup> See discussion *infra* Part V(B).

<sup>162</sup> *Hearings on the Adjustment of Status for Cuban Refugees*, *supra* note 1, at 11–20.

<sup>163</sup> *Cuba: Fidel Castro's Record of Repression*, HUMAN RIGHTS WATCH (Nov. 26, 2016), <https://www.hrw.org/news/2016/11/26/cuba-fidel-castros-record-repression>.

<sup>164</sup> Planas, *supra* note 142.

<sup>165</sup> FACT SHEET, *supra* note 52.

<sup>166</sup> *Id.*

for the end of the CAA, seems to rest on the logic that communism in Cuba ends with the death of Fidel; however, this argument fails to recognize that Raúl Castro, Cuba's current communist president, has been in power since 2008.<sup>167</sup> He has announced his intent to retire in 2018, and Miguel Díaz-Canel Bermúdez is predicted to be his successor.<sup>168</sup> There is no indication that Cuba will have democratic elections in the near future since a successor to the Communist Party is anticipated.<sup>169</sup> With no clear end to communism in Cuba, and no substantial improvement of human rights, the CAA still serves its legislative purpose. Interestingly enough, in the same press release statement, Representative Gosar stated, "until all remnants of the Castro regime are removed from power, Cuba will never be free. I join many of my Congressional colleagues in calling on [President] Donald Trump to undo President Obama's misguided executive actions on Cuba."<sup>170</sup> Based on his reasoning, Cuba is not free enough to engage in diplomatic relations, yet the Cuban people are apparently no longer oppressed enough to need the CAA.

C. *The CAA Is Consistent with Other United States Immigration Policies that Primarily Benefit Immigrants from Communist Regimes.*

1. Hungarian Refugees Were Granted Adjustment of Status Similar to Those Afforded under the CAA.

Previous legislation was enacted that allowed Hungarian refugees to have their status adjusted without the burden of requiring them to leave and reenter the United States.<sup>171</sup> Hungarian refugees came to the United States escaping the Soviet Union's oppression.<sup>172</sup> In October of 1956, Hungarian protestors demanded a more democratic political system as well as the end of Soviet oppression.<sup>173</sup> The Hungarian revolution came to an end on November 4, 1956 when the Soviet Union ensured victory.<sup>174</sup> During this

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<sup>167</sup> James C. McKinley Jr., *Raúl Castro Becomes Cuban President*, N.Y. TIMES (Dec. 4, 2008), <http://www.nytimes.com/2008/02/24/world/americas/24iht-cuba.5.10342397.html>.

<sup>168</sup> Damien Cave, *Raúl Castro Says His New 5-Year Term As Cuba's President Will Be His Last*, N.Y. TIMES (Feb. 24, 2013), <http://www.nytimes.com/2013/02/25/world/americas/raul-castro-to-step-down-as-cubas-president-in-2018.html>; see also Marc Frank, *Cuban Leader Raúl Castro Says He Will Retire in 2018*, REUTERS (Feb. 24, 2013), <http://www.reuters.com/article/us-cuba-castro-idUSBRE91N0HB20130225>.

<sup>169</sup> See Cave, *supra* note 168.

<sup>170</sup> Rep. Gosar, *supra* note 104.

<sup>171</sup> *Hearings on the Adjustment of Status for Cuban Refugees*, *supra* note 1, at 4.

<sup>172</sup> *Soviets Put Brutal End to Hungarian Revolution*, HISTORY, <http://www.history.com/this-day-in-history/soviets-put-brutal-end-to-hungarian-revolution> (last visited Oct. 31, 2016).

<sup>173</sup> *Id.*

<sup>174</sup> *Id.*

turbulent time about 200,000 Hungarians fled the country as refugees.<sup>175</sup> The United States adjusted the status of Hungarian refugees that would otherwise have been admissible as immigrants at the time of their arrival.<sup>176</sup> This act, the Act of July 25, 1958, has not been repealed.<sup>177</sup>

The Act of July 25, 1958 is significantly similar to the CAA. Both acts were a response to refugees entering the United States fleeing an oppressive, totalitarian regime.<sup>178</sup> The Hungarian refugees were fleeing from the Soviets, whereas the Cuban refugees were fleeing from Fidel Castro's regime.<sup>179</sup> Additionally, the Act of July 25, 1958 and the CAA require refugees to be present in the United States for two years before being eligible for an adjustment of status.<sup>180</sup> Lastly, both of these acts demonstrate the United States' policy against communism by playing a "sympathetic role as a country of asylum" for these refugees.<sup>181</sup>

## 2. Asylum for Chinese Immigrants

More Chinese immigrants have been granted asylum in the United States in recent years than any other group of immigrants.<sup>182</sup> The number of Chinese immigrants granted asylum partly reflects the United States' immigration policy towards Chinese nationals that are refugees due to China's "coercive population control program."<sup>183</sup> In 1996, "Congress passed IIRIRA § 601(a), which amended 8 U.S.C. § 1101(a)(42)" and broadened the definition of political refugees to include people who are forced to have an abortion or undergo sterilization, or people who reasonably

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<sup>175</sup> *Id.*

<sup>176</sup> See Act of July 25, 1958, Pub. L. No. 85-559, 72 Stat. 419, 8 U.S.C. § 1182 (1958) ("That any alien who was paroled into the United States as a refugee from the Hungarian revolution under section 212(d)(5) of the Immigration and Nationality Act [subsection (d)(5) of this section] subsequent to October 23, 1956, who has been in the United States for at least two years, and who has not acquired permanent residence, shall forthwith return or be returned to the custody of the Immigration and Naturalization Service, and shall thereupon be inspected and examined for admission into the United States, and his case dealt with, in accordance with provisions of sections 235, 236 and 237 of that Act [8 U.S.C.S §§ 1225, 1226 and 1227].").

<sup>177</sup> *Id.*

<sup>178</sup> See *Hearings on the Adjustment of Status for Cuban Refugees*, *supra* note 1, at 4.

<sup>179</sup> See *id.*; See also *Soviets Put Brutal End to Hungarian Revolution*, HISTORY, <http://www.history.com/this-day-in-history/soviets-put-brutal-end-to-hungarian-revolution> (last visited Oct. 31, 2016).

<sup>180</sup> See Act of July 25, 1958, Pub. L. No. 85-559, 72 Stat. 419, 8 U.S.C. § 1182. The CAA now requires the refugee to be present in the United States for one year rather than two. Compare 8 U.S.C. § 1255 (2012), with Cuban Adjustment Act, Pub. L. No. 89-732, 80 Stat. 1161 (1966).

<sup>181</sup> *Hearings on the Adjustment of Status for Cuban Refugees*, *supra* note 1, at 4.

<sup>182</sup> Joseph Ax, *End of China's One-Child Policy May Slow U.S. Asylum Cases: Experts*, REUTERS (Oct. 29, 2015), <http://www.reuters.com/article/us-usa-china-asylum-idUSKCN0SN30U20151029>.

<sup>183</sup> *Id.*

fear these procedures.<sup>184</sup> This definition of political refugees uniquely applies to China because of the nation's one child policy.<sup>185</sup>

China's one-child policy, introduced and implemented in the late 1970s and early 1980s, was designed to reduce the growth rate of China's population.<sup>186</sup> The policy prohibited families from having more than one child.<sup>187</sup> Those who violated the policy risked the possibility of forced abortions and sterilizations.<sup>188</sup> The amendment to § 1101(a)(42) was presumably a response to China's one-child policy.<sup>189</sup> This immigration policy, which distinctively benefits Chinese immigrants, is consistent with other special immigration policies that the United States has given other refugees escaping communist regimes.<sup>190</sup> China has since ended its one-child policy, and now encourages couples to have two children.<sup>191</sup> Experts argue that the new policy will significantly impact the number of Chinese immigrants that will be granted asylum, while others believe that the legal standard for Chinese immigrants will not change if China enforces the two-child limits through the same controversial measures as it did its one-child policy.<sup>192</sup>

### 3. Other Latin American Groups Entering the United States Are Not Treated the Same As Cuban Immigrants.

Other immigrant groups are not given the same privileged pathway to residency that Cuban immigrants receive. In fact, in 2014, the United States faced a crisis at the border in which thousands of Central Americans arrived seeking asylum.<sup>193</sup> Critics of the CAA have argued that it is hypocritical to

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<sup>184</sup> See *Shi Liang Lin v. United States DOJ*, 494 F.3d 296, 301 (2d Cir. 2007). See also 8 U.S.C. § 1101(a)(42) (2012).

<sup>185</sup> See Kenneth Pletcher, *One-Child Policy: Chinese Government Program*, ENCYCLOPEDIA BRITANNICA <https://www.britannica.com/topic/one-child-policy> (last updated July 24, 2017).

<sup>186</sup> *Id.*

<sup>187</sup> *Id.*

<sup>188</sup> *Id.*

<sup>189</sup> See § 1101(a)(42) ("For purposes of determinations under this Act, a person who has been forced to abort a pregnancy or to undergo involuntary sterilization, or who has been persecuted for failure or refusal to undergo such a procedure or for other resistance to a coercive population control program, shall be deemed to have been persecuted on account of political opinion, and a person who has a well founded fear that he or she will be forced to undergo such a procedure or subject to persecution for such failure, refusal, or resistance shall be deemed to have a well founded fear of persecution on account of political opinion.").

<sup>190</sup> See, e.g., Act of July 25, 1958, Pub. L. No. 85-559, 72 Stat. 419, 8 U.S.C. § 1182. See also Immigration and Naturalization Act of 1965, Pub. L. No. 89-236, 79 Stat. 911.

<sup>191</sup> *Ax*, *supra* note 182.

<sup>192</sup> *Id.*

<sup>193</sup> Halimah Abdullah, *5 Things You Need to Know About the Immigration Crisis*, CNN (July 7, 2014), <http://www.cnn.com/2014/07/07/politics/5-things-immigration-reality-check/>

turn away other Latin American groups, such as Mexicans fleeing drug cartels or Hondurans fleeing extreme violence, while providing a privileged path to residency for Cubans who are fleeing economic turmoil.<sup>194</sup> This argument, however, is flawed. Those who argue that Cubans face less violence than other Latin American immigrants, and are therefore not deserving of the CAA, fail to consider the political differences between Cuba and other Latin American countries, as well as the United States' use of the CAA historically as a foreign policy tool.

#### 4. Country Conditions of Mexico and Honduras Compared to Cuba<sup>195</sup>

Mexico is described as a “multiparty federal republic with an elected president and bicameral legislature.”<sup>196</sup> Mexico’s last presidential election was held in 2012<sup>197</sup> and its electoral process was considered to be free and fair.<sup>198</sup> Mexico’s human rights issues involved law enforcement and military abuse, as well as violence from organized criminal groups.<sup>199</sup> Human rights abuses included killings, torture, and kidnappings.<sup>200</sup>

Honduras is described as a “constitutional, multiparty republic.”<sup>201</sup> Honduras’s last national election was held in November of 2013 and was considered credible and transparent.<sup>202</sup> Honduras continued to suffer societal violence primarily from local and transnational gangs and drug traffickers.<sup>203</sup> These groups committed crimes such as murder, kidnapping and human

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index.html.

<sup>194</sup> See Mary Sanchez, *Cuban Migrants Get Unfair Advantage over Other Latinos*, KANSAS CITY STAR (Jan. 15, 2016), <http://www.kansascity.com/opinion/ops-columns-blogs/mary-sanchez/article54903545.html>.

<sup>195</sup> The purpose of this section is not to argue that Cuba faces more severe human rights violations than Mexico, Honduras, or other Latin American countries. In fact, one may argue that the human rights violations in Mexico and Honduras related to gang violence, for instance, are far more concerning and dangerous than the human rights violations in Cuba. The purpose of this section is to demonstrate how the political systems and human rights violations differ, which may ultimately explain why Cubans are given “special rights” compared to other Latin American immigrants.

<sup>196</sup> U.S. Department of State, *Mexico*, COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES FOR 2015, <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2015&dclid=253027> (last visited Sept. 16, 2016).

<sup>197</sup> *Id.*

<sup>198</sup> *Id.*

<sup>199</sup> *Id.*

<sup>200</sup> *Id.*

<sup>201</sup> U.S. Department of State, *Honduras*, COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES FOR 2015, <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2015&dclid=253023> (last visited Sept. 16, 2016).

<sup>202</sup> *Id.*

<sup>203</sup> *Id.*

trafficking.<sup>204</sup>

Cuba's country conditions differ from Mexico and Honduras for two reasons. First, human rights abuses in Cuba are not primarily related to violence from organized criminal groups like in Mexico and Honduras. Rather the human rights abuses in Cuba come from the government that threatens, intimidates, and detains those who protest against it.<sup>205</sup> Second, Mexico and Honduras are recognized democracies, whereas Cuba is an authoritarian state that recognizes only the Communist Party.<sup>206</sup> Cubans, therefore, are distinguishable from other Latin American citizens because of their political system. In other words, the democratic opportunities in other Latin American countries greatly differ from Cuba's political oppression.<sup>207</sup>

Some may argue that citizens of Mexico and Honduras face greater human rights violations than Cuban citizens, and, therefore, it is unfair to give Cuban immigrants special treatment when Mexican, Honduran, and other similarly situated immigrants face greater human rights abuses due to the prevalence of gangs and drug traffickers in those nations. The fact that these immigrants are not treated the same as Cuban immigrants, however, further strengthens the argument that the United States has established special immigration policies for immigrants from communist regimes. In Cuba's particular case, the CAA has historically been used as a foreign policy tool with the intent of demonstrating the United States' disapproval of communism in Cuba.<sup>208</sup> The use of the CAA as a foreign policy tool and symbol of anti-communism, however, may not continue for much longer. In the last days of President Obama's second term, members of his Administration advocated for Congress's repeal of the CAA to continue normalizing diplomatic relations with Cuba.<sup>209</sup>

## VI. THE FUTURE OF THE CAA

A change in the CAA could come by either a presidential determination stating that Cuba has a democratically-elected government in power, or by congressional action repealing the Act.<sup>210</sup> The CAA should still be in effect so long as Cuba is not a democracy. Congress specifically enacted a law in 1996 that states that the CAA would only be repealed once Cuba has a

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<sup>204</sup> *Id.*

<sup>205</sup> See CUBA COUNTRY REPORTS, *supra* note 118.

<sup>206</sup> See *id.*

<sup>207</sup> See Gabriel Zeller, *Do Cubans Deserve Special Treatment? A Comparative Study Relating to the Cuban Adjustment Act*, 4 ELON L. REV. 235, 250–51 (2012).

<sup>208</sup> See generally *Hearings on the Adjustment of Status for Cuban Refugees*, *supra* note 1.

<sup>209</sup> *On-the-Record Press Call*, *supra* note 65.

<sup>210</sup> Chardy & Torres, *supra* note 84.

democratic government.<sup>211</sup> The law states: “Public Law 89-732 [Cuban Adjustment Act] is repealed effective only upon a determination by the President under section 203(c)(3) of the Cuban Liberty and Democratic Solidarity (Libertad) Act of 1996 (Public Law 104-114) that a democratically elected government in Cuba is in power.”<sup>212</sup> This twenty-year-old law reaffirms that the legislative intent of the CAA is to provide a pathway to Cubans who flee the oppressive communist regime. As long as Cuba remains a communist country, then the legislative history and legislative intent of the CAA require the Act to remain in effect.

The CAA is under threat by congressmen due to restored diplomatic relations with Cuba; however, now is not the time to repeal the CAA. Prevalent human rights violations in Cuba continue to exist despite renewed diplomatic relations.<sup>213</sup> The oppression that Cuba’s communist government has practiced for decades will likely not be resolved in a short time period. Proponents of repealing the CAA seem to focus on the renewal of diplomatic relations without taking into consideration that the CAA focuses on the effect Cuba’s oppressive government has on its citizens.<sup>214</sup> If Congress no longer wants to wait until Cuba is a democracy, then, at the very least, the humanitarian situation in Cuba must significantly improve before repealing the Act so that its legislative intent is not completely lost.

Another reason that support for repeal of the CAA has increased is the influx of Cuban immigrants arriving in the United States. While the numbers of Cubans who entered in 2015 and 2016 are certainly alarming, it is not the first time that the nation received a large wave of Cuban immigrants.<sup>215</sup> From 1959 to October of 1962, approximately 248,000 Cuban immigrants came to the United States.<sup>216</sup> From 1965 to 1973, “Freedom Flights” were established from Cuba to Miami and roughly 260,561 Cubans arrived to the United States.<sup>217</sup> In 1980, over 120,000 Cubans, commonly referred to as *Marielitos*, fled to the United States when Castro temporarily lifted restrictions.<sup>218</sup> In addition, now that the Wet Foot, Dry Foot Policy has officially ended, only Cubans who enter the country legally will be eligible

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<sup>211</sup> Wasem, *supra* note 8, at 2.

<sup>212</sup> The Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. No. 104-208, 110 Stat. 3009 § 606(c).

<sup>213</sup> HUMAN RIGHTS WATCH, *supra* note 133.

<sup>214</sup> See, e.g., Correcting Unfair Benefits for Aliens Act of 2016, H.R. 4847 114th Cong. (2016) (stating “[t]he Obama Administration has reestablished relations with Cuba, and that, therefore, the special treatment Cuban nationals receive under the Cuban Adjustment Act . . . [is] no longer applicable . . .”).

<sup>215</sup> See Green, *supra* note 12.

<sup>216</sup> *Id.*

<sup>217</sup> *Id.*

<sup>218</sup> FRANKLIN, *supra* note 9, at 158–64.

to use the CAA.<sup>219</sup> This change in policy will likely decrease the number of Cuban immigrants entering the United States.

Could the political affiliations of recent Cuban immigrants be a concern for congressmen against the CAA? Cuban immigrants have traditionally voted Republican; however, recent arrivals tend to be less Republican and are more likely to support lifting restrictions on trade and travel with Cuba.<sup>220</sup> Additionally, younger Cubans increasingly affiliate more with the Democratic Party than their elders.<sup>221</sup> Perhaps Republicans who now want to repeal the CAA and remove special refugee benefits from Cuban immigrants are motivated to do so because recent Cuban immigrants increasingly favor the Democratic Party.

If Congress repeals the CAA before Cuba's government is democratically elected, Congress should allow the Act to stay in effect for five years after the bill is enacted. The logic behind this is that Cuba will likely not change its oppressive tactics in a short span of time after diplomatic relations commence. If Congress immediately repeals the Act, Cubans, who would otherwise legally come to the United States to flee oppression in Cuba, would no longer be afforded the benefit of the CAA. The two bills, H.R. 3818 and H.R. 4847, propose the immediate repeal of the CAA.<sup>222</sup> The proposal of such short notice is possibly related to the recent increase of Cuban migrants attempting to enter the United States, and to preventing future Cuban migrants who enter the United States with a visa from staying in the United States and becoming permanent residents under the CAA.

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<sup>219</sup> See *On-the-Record Press Call*, *supra* note 65.

<sup>220</sup> Mark Hugo Lopez and Jens Manuel Krogstad, *As Cuban American Demographics Change, So Do Views of Cuba*, PEW RESEARCH CENTER (Dec. 23, 2014), <http://www.pewresearch.org/fact-tank/2014/12/23/as-cuban-american-demographics-change-so-do-views-of-cuba/>. See also Patricia Mazzei, *FIU Poll: Majority of Miami-Dade Cubans Support Obama Policy*, MIAMI HERALD (Sept. 14, 2016), <http://www.miamiherald.com/news/politics-government/election/article101749052.html>.

<sup>221</sup> Lopez and Krogstad, *supra* note 220.

<sup>222</sup> See Ending Special National Origin-Based Immigration Programs for Cubans Act of 2015, H.R. 3818, 114th Cong. § 2(a)(4) (2015); see also Correcting Unfair Benefits for Aliens Act of 2016, H.R. 4847 114th Cong. (2016).



## VII. CONCLUSION

The future of the CAA will depend on how diplomatic relations with Cuba progress. President Barack Obama's policy towards Cuba may quickly come to an end under Donald Trump's Administration. In a campaign speech in Miami, Florida, Donald Trump discussed his intention to reverse the "concessions" that Barack Obama granted Raúl Castro's regime unless Castro meets his demands of religious and political freedom for Cubans.<sup>223</sup> Trump reaffirmed his position towards Cuba on November 28, 2016 when he wrote on Twitter: "If Cuba is unwilling to make a better deal for the Cuban people, the Cuban/American people and the U.S. as a whole, I will terminate the deal."<sup>224</sup> On June 16, 2017, the Trump Administration released a memorandum regarding changes in diplomacy towards Cuba.<sup>225</sup> The memorandum announced heightened travel restrictions and assured that government agencies would more carefully enforce and monitor Americans' adherence to permissible travel reasons.<sup>226</sup>

Trump's apparent intention to reverse Barack Obama's restored diplomatic policy with Cuba would make the continuation of the CAA more probable. Trump's anti-immigration policies, however, may nevertheless affect the Act.<sup>227</sup> The potentially unpredictable changes in American-Cuban diplomacy, as well as the sudden end of the Wet Foot, Dry Foot Policy, further proves that drastic revisions of the Act should not occur abruptly. Trump's Administration could both destroy diplomatic relations with Cuba and encourage Congress to revise or repeal the CAA. The CAA has allowed Cubans to more quickly and efficiently establish new homes in the United States, where their basic freedoms are finally available. The Act is in danger of being repealed, not because its legislative intent is no longer served, but because the United States' foreign policy towards Cuba has changed. The uncertainty of diplomatic relations between the United States and Cuba under the Trump Administration strengthens the need for consistency in the

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<sup>223</sup> *Donald Trump Speech in Miami, Sept. 16*, FACTCHECK.ORG (Sept. 16, 2016), <http://transcripts.factcheck.org/donald-trump-speech-in-miami-sept-16/>.

<sup>224</sup> Donald Trump (@realDonaldTrump), TWITTER (Nov. 28, 2016, 6:02 AM), <https://twitter.com/realDonaldTrump/status/803237535178772481>.

<sup>225</sup> See *National Security Presidential Memorandum on Strengthening the Policy of the United States toward Cuba*, White House (June 16, 2017), <https://www.whitehouse.gov/the-press-office/2017/06/16/national-security-presidential-memorandum-strengthening-policy-united>.

<sup>226</sup> *Id.* See Martina Kunović, *Five Things You Need To Know about Trump's Cuba Policy – and Who It Will Hurt*, WASHINGTONPOST, (June 22, 2017), [https://www.washingtonpost.com/news/monkey-cage/wp/2017/06/22/five-things-you-need-to-know-about-trumps-cuba-policy-and-who-it-will-hurt/?utm\\_term=.c3dbd6041193](https://www.washingtonpost.com/news/monkey-cage/wp/2017/06/22/five-things-you-need-to-know-about-trumps-cuba-policy-and-who-it-will-hurt/?utm_term=.c3dbd6041193).

<sup>227</sup> For a summary of Donald Trump's proposed immigration policy, see *Immigration*, DONALDJTRUMP.COM, <https://web.archive.org/web/20170107080622/https://www.donaldjtrump.com/policies/immigration> (last visited Sept. 6, 2017).

United States' response to Cuban immigrants fleeing the nation's communist regime. In other words, the unpredictability in diplomatic relations between these two nations calls for the continuance of the CAA and stability in handling how Cubans immigrants will be processed and received in the United States.