

**CUBAN EMIGRATION POLICIES**

Report Submitted by the Department of State  
Pursuant to Section 2245 of the Omnibus Consolidated and Emergency  
Supplemental Appropriations Act, 1999  
(P.L. 105-277)

## **CUBAN COMPLIANCE WITH THE MIGRATION ACCORDS (April 2004 through October 2004)**

Cuba is clearly not in full compliance with its commitments under the September 9, 1994, "Joint Communiqué" and the May 2, 1995, "Joint Statement," otherwise known as the "Migration Accords," although it continues to enforce emigration policies that are partly consistent with those documents.

The United States and Cuba "agreed to take measures to ensure that migration between the two countries is safe, legal, and orderly" in the September 9, 1994, "Joint Communiqué." In the May 2, 1995, "Joint Statement" the two countries reaffirmed their common interest in preventing unsafe departures from Cuba. To that end, the Joint Statement provides for the return of Cuban migrants intercepted at sea by the United States attempting to enter the United States illegally, unless the Department of Homeland Security (DHS) determines that they have protection concerns that preclude their return. Similarly, the Joint Statement provides for the return of Cuban migrants who illegally enter the U.S. Naval Base at Guantanamo Bay, unless DHS determines that they have protection concerns that preclude their return. Under the Joint Statement, Cuba is required to "ensure that no action is taken against those migrants returned to Cuba as a consequence of their attempt to immigrate illegally" to the United States. Cuba shares responsibility with the United States "to work together to facilitate the procedures necessary to implement these measures." The United States insists that Cuba permit U.S. officials to monitor returned migrants to verify that no action is taken against them, but the Cuban government does not permit such monitoring outside Havana.

### **I. Methods Employed By The Cuban Government To Enforce The September 9, 1994, Joint Communiqué.**

The 1994 Joint Communiqué specifies a number of areas for implementation of the agreement between the United States and Cuba "to

take measures to ensure that migration between the two countries is safe, legal, and orderly."

### **Safety of Life at Sea**

The Government of Cuba (GOC) agreed "to take effective measures in every way it possibly can to prevent unsafe departures using mainly persuasive methods."

While the Cuban Border Guard continues to take steps to discourage illegal departures, including land and sea patrolling, the regime does not take the necessary enforcement measures to terminate the unsafe voyages of Cuban migrants aboard vessels while they are still in Cuban territorial waters. More often than not, the Cubans report a suspected migrant vessel's position, course, and speed to the United States Coast Guard (USCG), and allow it to continue towards the United States. From April 11, 2004, to October 10, 2004, the USCG interdicted 640 Cubans at sea, compared to 892 during the same period last year.

GOC public statements continue to contribute to a climate that is not conducive to implementation of the Accords because they have the effect of encouraging illegal migration and thus contradict Cuba's formal support of safe, legal and orderly migration. For example, to generate alarm within the Cuban population and as a pretext to suppress the peaceful opposition, the GOC repeatedly and fallaciously is still asserting that a U.S. invasion is imminent despite official denials by Secretary of State Powell and Defense Secretary Rumsfeld that the United States is contemplating such military action. As recently as September 6, Cuban President of the National Assembly Ricardo Alarcon told the Cuban press that there was a "real threat" of a U.S. military attack on Cuba, rejecting a March 2004 explicit denial by the Chief of Mission of the U.S. Interests Section in Havana (USINT), James C. Cason.

Similarly, Cuban Foreign Minister Perez Roque and other Cuban officials have repeatedly and fallaciously asserted that the United States has not met its commitments under the Accords. For example, Perez Roque publicly stated in May 2004 that the United States had not fulfilled its obligation under the Migration Accords in 2003 because it had issued only 17,000 travel documents; in fact, the U.S. Government exceeded its

obligation both in 2003 and in 2004 by issuing 21,075 and 23,075 travel documents respectively.

The GOC also continues to impose impediments to the safe return of Cuban migrants interdicted at sea by refusing to discuss opening a larger and deeper port to USCG vessels that return the migrants. The lack of such a port significantly complicates the operational aspects of the returns, in some cases requiring risky at-sea transfers of migrants from one USCG vessel to another. Moreover, the exclusive use of the shallow-water port of Cabanas requires the use of multiple USCG vessels to repatriate large numbers of migrants. Using larger USCG vessels to conduct these repatriations would significantly reduce the amount of time and resources involved. While this is clearly an issue of safety of life at sea and the effective use of resources, the GOC flatly refuses to discuss the matter.

Further, the GOC continues to impose impediments to the legal migration of certain migrants and certain categories of migrants (discussed below), thereby creating the conditions that encourage such individuals to conclude that unsafe and illegal migration is their only means of escaping Cuba and gaining entry into the United States.

### **Alien Smuggling**

According to the 1994 Joint Communiqué, the GOC will "take effective measures in every way it possibly can to oppose and prevent the use of violence by any persons seeking to reach, or who arrive in, the United States from Cuba by forcible diversions of aircraft and vessels." This provision covers alien smuggling as well as a broader range of violent activity, including hijackings, by persons seeking to leave Cuba to emigrate to the United States. The GOC implements this provision through substantial criminal penalties for alien smuggling and by prosecuting smugglers who are caught in Cuban territory.

While the GOC suggests that it has a tough public stance against hijackings, its handling of specific cases shows most clearly a contempt for the basic rights of its own citizens. The United States remains concerned about the possibility of future hijacking of aircraft and vessels by Cuban migrants and the Cuban response. In recognition of the regime's apparent inability or unwillingness to prevent hijackings, on three occasions USINT has issued public statements warning Cubans that hijackings are "extremely

serious violations of international law and of United States law," that the United States will interdict hijacked conveyances bound for the United States, and that any individual who hijacks an aircraft or vessel and successfully arrives in the United States, or who assaults a federal officer during an interdiction, will be prosecuted with the full force of U.S. law. On each occasion, USINT requested Cuban cooperation in publishing and broadcasting the message, so that ordinary Cubans would understand our policy; Cuba has consistently refused to do so.

During the period from April to October 2004, the GOC permitted U.S. prosecutors and defense counsel to depose interdicted migrants in two alien smuggling cases in U.S. federal court, but repeatedly delayed responding in a timely manner to a similar request made in September in a related case.

The Cuban Border Guard continues to provide the USCG with coordinates and descriptions of some vessels departing Cuban territorial waters in the direction of the United States, but has in recent months failed to live up to its obligations under international law by refusing to undertake flag state responsibility to interdict stolen vessels bound for the United States. In the past the GOC has intentionally attempted to evade these obligations.

### **Legal Migration**

Pursuant to the 1994 Joint Communiqué, the GOC agreed to facilitate the procedures necessary for the United States Government to document certain Cuban migrants for travel.

The GOC consistently undermines this commitment by denying exit permits to certain otherwise qualified Cuban citizens, making some people wait for years to migrate. The GOC routinely denies exit permits to family members of persons it deems "defectors," such as relatives of GOC officials who decide to stay in the United States. In addition, GOC "Resolution 54" imposes nearly insurmountable obstacles to emigration to the United States for all medical professionals. At the June 2003 session of talks to review the Joint Communiqué, the U.S. delegation presented the Cuban delegation with a list of 636 names of persons documented by the U.S. Government for travel to the United States but whom the GOC had denied exit permission. As of October 2004, that list had grown to 1,621 individuals, including

accompanying family members. This Cuban-perpetrated injustice effectively prevents reunification with family members in the United States and could encourage its desperate victims to undertake unsafe and illegal migration to the United States, which is completely contrary to the spirit of the Migration Accords.

The GOC also continues to impose exit permit fees and to charge to migrants bound for the United States medical examination fees that far exceed those imposed anywhere else in the region. (Migrants going to Canada, for example, have similar examinations conducted at no cost to them because they are covered by the Cuban government's public health program.) These fees are also many times higher than similar fees charged by other nations in the hemisphere for migrants bound for the United States. In addition, it is clear that the GOC does not use the medical examination fees to improve the medical examinations in any significant way; the USG has found more than one case of tuberculosis in migrants the GOC had given clean bills of health. The fees constitute an effort by the GOC to milk prospective migrants and any relatives they might have in the United States for additional source of income. USINT estimates that, taking into account all medical, legal, passport, and permit fees, the GOC "harvests" over \$12 million annually from legal Cuban emigrants to the United States. In the past year, the GOC has been making it even more difficult for migrants to obtain the documents required for legal migration. It takes two to three months and sometimes longer to issue passports, and it continues to erect obstacles to medical exams on a seemingly random basis, especially to the children of some applicants.

Another Cuban imposed impediment to legal migration is the GOC's refusal to permit the USG to conduct a much needed new registration period for the Special Cuban Migrant Program (SCMP), otherwise known as the "lottery, *bombo*, or *sorteo*," despite repeated USG requests and Cuba's earlier stated commitment to permit such registrations to occur every two years. (Registrations were held in 1994, 1996, and 1998.) The SCMP is the centerpiece of the U.S. commitment to safe, legal and orderly migration under the Migration Accords, providing over 75 percent of the minimum 20,000 Cuban migrants the USG is committed to documenting for permanent immigration to the United States each year. Those family members who qualify under the SCMP may receive travel documents at the same time in order to travel together to the United States. Because the last lottery registration took place in 1998, there are currently no young adults

between the ages of 18 and 24 in the applicant pool. A new registration period would allow those who have turned 18 years of age since 1998, or who did not apply for the SCMP at that time, the chance to register for a legal migration opportunity. These people's ineligibility to qualify for safe, legal, and orderly travel to the United States encourages them to consider other methods for entering the United States. The USG firmly believes that a new lottery would send a clear signal of the commitment of both governments to safe, legal, and orderly migration, would permit a necessary refreshment of the lottery database, and would provide hope to Cubans who turned 18 since 1998 or who have since 1998 decided that they wish to migrate. However, the GOC continues to refuse to allow a new registration to take place.

### **Excludables**

Cuba has consistently flouted its obligations under international law by refusing to accept the return of its nationals found to be no longer eligible to remain in the United States due to criminal offenses they committed (with the exception of Cuban excludables being returned pursuant to the 1984 agreement regarding migrants who arrived in the United States as a consequence of the Mariel boatlift.) The United States has proposed that a technical working group comprised of representatives from each government meet to better understand each other's concerns and to explore possible options to allow for the return of at least some of the Cuban criminal excludables. The GOC's response to our efforts has been to refer to non-germane issues, including U.S. law and USG broadcasting. The USG continues to press the GOC to comply with its obligations to accept the return of all of its nationals, including Cuban nationals who have been convicted of serious crimes and are subject to immigration proceedings or ordered excluded, deported or removed from the United States.

### **Review of Agreement**

Both the United States and the GOC agreed that future meetings to review the Migration Accords would be scheduled by mutual agreement. Prior to December 2003, this was implemented through participation in bilateral, semi-annual Migration Talks. The USG declined to schedule the December 2003 session of the talks, however, because of the GOC's pointed and persistent refusal to discuss substantively the five most important impediments it has imposed to safe, legal and orderly migration, many of

which have already been noted: refusal to issue exit permits to qualified migrants; refusal to permit a new registration for the "lottery;" refusal to provide a new, safer port for repatriations; refusal to permit USINT to travel to monitor returned migrants; and refusal to accept the return of Cuban criminals deemed excludable from the United States.

The USG is strongly committed to safe migration and believes that Migration Talks are only productive and useful if the issues mentioned above, which have always been at the top of our agenda, are discussed in a meaningful manner. The USG has consistently raised all five issues with the GOC, which in turn has stated in writing, with regard to four of the five, its unwillingness to address these matters. At the same time that the USG declined to schedule the December 2003 annual Migration Talks meeting, the USG emphasized its continuing commitment to safe, legal and orderly migration, and emphasized that it is prepared to consider rescheduling the talks when we mutually deem them more productive. The GOC continues to be unprepared to move forward on a substantive agenda and instead characterizes the USG action as a political maneuver for which there would be "very serious consequences."

## **II. Treatment By The GOC Of Persons Who Have Returned To Cuba**

The United States insisted in the discussions leading to the May 2, 1995, Joint Statement that U.S. officials must be able to monitor returned Cuban migrants to verify that returned Cubans are not penalized or harassed because of their unauthorized departures, and the Cuban government agreed. However, the GOC has for some time maintained that it is not obligated to permit such monitoring visits to take place, but does so only as a courtesy. The USG insists that such monitoring is essential for full implementation of the Accords, and notes that the Cuban regime consistently permitted such monitoring to take place until 2003. USINT continues to request approval for monitoring trips.

Since March 2003, the GOC has refused to permit USINT officers to travel outside of Havana for the purpose of monitoring repatriated Cuban migrants. On numerous occasions the Chief of Mission formally protested at the highest level of the Cuban government available to him this GOC failure to comply with the Migration Accords. The Department of State filed similar protests with the Cuban Interests Section in Washington.

Prior to March 2003, although USINT found that a majority of the returnees it was able to monitor did not suffer retribution from the Cuban authorities as a result of their attempt to depart illegally, there continued to be clear and credible instances of government harassment and punishment of returnees. Cubans tell us the GOC continues to take a range of actions against returned migrants. Doctors have been demoted, transferred to remote locations, and told that they will never be able to pursue specialized studies or gain access to required continuing education. Teachers have been declared "untrustworthy," fired from their jobs, and then offered work as janitors in the same schools. Workers in the tourism sector have been fired. While these dismissals are often attributed to "absenteeism" the workers are barred from other jobs where they could make best use of their education and experience. A significant number of returned migrants have reported that the GOC imposed obstacles increase the appeal of alternative means of departure.

### III. CONCLUSION

The GOC's implementation of the Migration Accords remains seriously deficient. The most significant barriers to full implementation of the accords are those created by the Cuban government, yet that same government refuses to address substantively the impediments it has imposed to safe, legal, and orderly migration. Instead, it has created additional impediments such as delay in the issuance of passports and medical exams. Another barrier is the GOC's continued attempts to discredit the USG efforts to meet the minimum of 20,000 Cuban migrants it committed to documenting for permanent immigration to the United States each year. In 2004 the USG once again not only fulfilled, but exceeded its commitment. Public charges by the GOC to the contrary can only contribute to migrants taking to the sea for fear that they may not be able to emigrate legally. While the USG believes that documenting more than 20,000 migrants sends a clear signal of the commitment of both governments to safe, legal, and orderly migration, the GOC appears to remain "committed" only to continuing to discredit the USG's efforts. Although it is in the power of the GOC to comply with the Migration Accords, it has cynically chosen to manipulate them for political gain in an effort to continue to prevent the Cuban people's desire to live in freedom.

Dear Mr. President:

On behalf of the Secretary of State, we are transmitting to the Congress a report concerning methods employed by the Government of Cuba to comply with the United States-Cuba September 1994 "Joint Communiqué" and the treatment by the Government of Cuba of persons returned to Cuba in accordance with the United States-Cuba May 1995 "Joint Statement," together known as the Migration Accords. This report is provided pursuant to Section 2245 of the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999 (Public Law 105-277).

We hope this report is useful to you. As always, please do not hesitate to contact us if you have further questions.

Sincerely,

Paul V. Kelly  
Assistant Secretary  
Legislative Affairs

Enclosures:

As stated.

The Honorable

Richard B. Cheney,  
President of the Senate.