

## The Cuban Adjustment Act 44 Years Later

By Kelly Knaub

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Havana, Cuba - photo: Caridad

HAVANA TIMES, May 15 — In the middle of the night off the coast of Caibarien, Cuba, Miakiel González waded the waist-deep Caribbean water until he stood a mile from the shore. Carrying nothing more than a bag packed with two changes of clothes, some drinking water and his Cuban identification documents, 31-year-old González waited several hours in the sea for the smuggler boat to arrive. “It’s very scary,” he said, “because it’s about 2 a.m. in the morning.”

Four other Cubans – a mother, father, and daughter, and a 40-year-old man – waited alongside him. When the boat finally arrived around 5 a.m., González and the others climbed aboard. The boat then sped, in the dark, almost 450 miles to Cancun, Mexico.

“You cannot see nothing,” González said, shaking his head, “Your hands – you cannot see nothing.”

After waiting in Cancún for three days, González flew to Mexico City. The next morning, April 9, 2010, he flew to Matamoros in Northeastern Mexico and took a taxi to the border. He then walked for 40 minutes across the U.S. – Mexico border, approached a border patrol agent and identified himself as Cuban.

He was welcomed in, offered food and paroled into the United States by the end of the day.

González said without the Cuban Adjustment Act – a law that almost always grants permanent residency to Cuban nationals after they have been in the U.S. for one year and one day – he wouldn’t have made the dangerous journey.

### A Brief History

The Cuban Adjustment Act was enacted in 1966 in response to the mass migration that occurred after the Cuban Revolution of 1959 and after repeated attempts by the U.S. government to overthrow the Castro regime had failed.

Phil Peters, a Cuba expert and vice president of the Lexington Institute in Washington, said that in the immediate aftermath of the revolution, most Cubans arrived to the U.S. with roundtrip tickets.

“By 1966, there were hundreds of thousands of Cubans here...these people had no status,” he said. “It was sinking in that they weren’t going to go back any time soon. So, the point was to find a way to regularize their status.”

44 years later, the Cuban Adjustment Act continues to regularize the status of Cubans who come to the U.S., regardless of how they arrive.

After the mass migration of over 35 thousand rafters, known as “*balseros*” to Florida in 1994, the United States and Cuba held negotiations in an effort to normalize migration. In the migration agreement of 1995 the law was revised and evolved into what has come to be known as the wet foot/dry foot policy.

This amendment to the law requires the U.S. Coast Guard to repatriate Cubans interdicted at sea, with “wet feet,” to Cuba unless they can prove a fear of

persecution. Cubans who make it to dry land, with “dry feet,” are generally permitted to stay in the U.S. and adjust their status the following year.

### **Across the Border**

Over the past several years, the number of Cubans migrating to the U.S. through the Mexican border has increased dramatically, while Cuban migration across the Florida Straits to Miami has declined.

According to Customs and Border Protection data, the number of Cubans crossing the Mexican border rose steadily from almost 6,000 in 2004 to over 11,000 in 2007. In 2008, almost 10,000 Cubans came through Mexico. During this time period, the number of Cubans arriving through Miami fluctuated around 1,000 per year and began to decrease in 2006. The number of Cubans crossing the Mexican border dropped in 2009 to slightly over 5,600, but the number is still compelling.

Vicki Huddleston, former Chief of Mission of the U.S. Interests Section in Havana, said in a telephone interview that this recent trend is a result of intensified U.S. Coast Guard patrols in the Florida Straits.

Between 2004 and 2005, Coast Guard interdictions of Cubans more than doubled, from 1,225 to 2,712. By 2007, interdictions reached a 13-year-high of 2,868 and dropped to 2,199 in 2008. The Coast Guard interdicted only 799 Cubans in 2009.

Since Cubans know all they need to do is land on U.S. soil with “dry feet” to be admitted, the smuggling route through Mexico has become more appealing. This phenomenon has been dubbed “dusty foot.”

Huddleston said that the Cuban Adjustment Act is “definitely a pull factor” in the human smuggling business.

González’s family and friends in the U.S. paid roughly \$7,000 for his passage, although the average rate for Cubans is \$10,000 to \$15,000 per person.

A smuggler contact had visited González in his hometown of Sancti Spiritus, in central Cuba, to deliver instructions on the time and place of departure.

González left behind his mother, stepfather and brother when he took a bus to the nearby city of Santa Clara. From there he got a ride to the coast of Caibarien from a friend.

After González was admitted to the U.S., he took a bus from Brownsville to Houston, Texas and then flew to Newark, N.J. He now lives with his best friend in Union City, N.J. His father, his only family member in the U.S., resides in Kentucky.

Christina Rosalín Peña, a Cuban-American, is González’s social worker at the International Institute of New Jersey, a non-profit organization that provides a variety of immigration services.

Peña said, “Cubans are the only group in the world allowed this privilege to come to the U.S. without documentation other than their citizenship papers and be allowed into the country and regularized after a year.”



Plaza Vieja in Old Havana - photo: Caridad

Although the U.S. has passed similar laws for migrants from other countries who arrived during specific times periods – such as the Hungarian Refugee Act, the Cuban-Haitian Adjustment Act, the Indo-Chinese Parole Adjustment Act and the Nicaraguan Adjustment/Central American Relief Act – the Cuban Adjustment Act is the only law in history that has paroled foreign nationals into the U.S. for more than four consecutive decades.

The U.S. has no such migration policy with any of its political allies, nor with other “enemies” it deems repressive such as China or North Korea, nor with

Iran, Sudan or Syria – countries that, in addition to Cuba, it considers to be state sponsors of terrorism.

Peña said the Cuban Adjustment Act “perpetuates human smuggling funded by the Cuban-American community, which is ironic, because of the money and power that they have.”

Media reports have implicated a number of Cuban-Americans in human smuggling activities in recent years. These smuggling operations have inflamed Mexican gang violence. Mexican officials have blamed killings linked to the trade on a turf war between the Miami mafia and Mexican gangs who want to control the lucrative human smuggling routes.

Although Peña said the law was originally enacted to “tie administrative ends,” she said it was also used as a foreign policy tool. “The U.S. government at the time wanted to make it seem like, ‘look at all the poor Cubans fleeing communism, if they loved it so much they would have stayed,’ so they opened the border.”

Peña said that while some of the Institute’s clients arrive through the Cuban visa lottery or refugee program, the majority are parolees – immigrants who have arrived without legal documents and have been paroled into the U.S. – and 75 percent have been smuggled across the Mexican border.

### **A Dangerous Trek**

One report estimates that one out of every 20 Cubans being smuggled to the U.S. dies in the attempt. While countless lives have been lost at sea over the years in the Florida Straits, the new journey through Mexico presents even more risks.

“It’s really dangerous,” Peña said. We have clients that come in here and ... some of them are traumatized. It’s really messy ... There are a lot of kidnappings going on.”

Peña said the high value of Cubans – \$10,000 to \$15,000 compared to the average \$2,000 asking price for other Central American immigrants – is making them targets for ransom kidnappings.

“There are people looking for Cubans, to abduct them, call their family members in Florida, and tell

them ‘Hey look, we have your family member’ ... If they know that you’re willing to pay \$10,000 for them, why not pay \$20,000 for them? And that’s all because of the Cuban Adjustment Act,” she said. “Because if they didn’t have that power to cross the border and be regularized in a year, they wouldn’t make the journey. They wouldn’t risk all of that.”

According to media reports, four Cuban women were kidnapped by the notorious Zetas gang while being smuggled to Mexico in September 2009 and are believed to have been forced into prostitution; another Cuban woman was kidnapped by the same gang for a heavy ransom the previous July.

The Mexican newspaper *El Universal* reported in 2008 that 33 Cuban men who had been caught at sea while being smuggled to Mexico were later kidnapped on a federal bus in Chiapas. *La Jornada*, one of Mexico City’s leading newspapers, linked members of the anti-Castro Cuban American National Foundation (CANF) in Miami to the infamous Gulf cartel and Zetas gang in this incident. CANF’s president, Francisco “Pepe” Hernandez, denied the claim.

On November 20, 2008, Mexico agreed to repatriate undocumented Cubans arriving in Mexico. Some experts predicted that the new policy would increase bribery and corruption of Mexican officials.

According to González, the prediction was right. He said Cubans sometimes pay thousands of dollars to immigration officers in Mexico. González didn’t have to pay a bribe – he received a false Mexican driver’s license from a friend when he arrived to Cancun.

### **Cuba’s Disobedience**

Saul Landau, a senior fellow and vice chair of the Institute for Policy Studies, called the Cuban Adjustment Act “contradictory and stupid,” and added, “We’ll take you if you’re willing to risk your life.”

Landau said there were three initial reasons for U.S. policy in Cuba: allying with Soviet military powers, exporting revolution and expropriating American companies. The first two have vanished completely, he said.

While most experts contend that the Cuban Adjustment Act is an outdated Cold War policy, Landau dismissed that theory. He said Cuba's disobedience to Washington is what drives U.S. policy in Cuba.

"Lift the travel ban and the embargo, period," Landau said. "If you really want change, that's how you get it. But we don't want change in Cuba or we would have done that a long time ago."

### **Migration Talks**

U.S. and Cuban officials met in February in Havana for a second round of renewed migration talks since July 2009. In December 2003, the U.S. government cancelled the bi-annual meetings – a stipulation of the migration agreement of 1995 – because of "the refusal of the Government of Cuba to address five specific impediments to safe, legal and orderly migration."

The Cuban government responded to the cancellation in a statement by the Ministry of Foreign Affairs: "The falsehood and absurdity of this decision are more notorious when recalling that the US authorities have turned down, without the slightest explanation or even the interest in discussing, the proposal of a new bilateral migration agreement put forth by Cuba since September 2000 and reiterated on five occasions."



Havana from the Focsa Building. US Interests Section top center. Photo: Caridad

Cuba submitted a new draft migration accord aimed at ensuring legal, safe and orderly migration and efforts to combat human smuggling during migrations talks in New York last July.

During the talks in Havana in February, Cuba's Deputy Foreign Minister Dagoberto Rodriguez insisted that legal, safe and orderly migration would not be achieved as long as the United States continued to implement the Cuban Adjustment Act and wet foot/dry foot policy.

The U.S. delegation, led by Principal Deputy Assistant Secretary of State Craig Kelly, addressed three U.S. priorities on Cuba migration issues: effectively operating the U.S. Interests Section, monitoring the return of repatriated migrants and repatriating Cuban nationals who are excludable on criminal grounds.

The delegation separately called for the immediate release of Alan Gross, the U.S. citizen arrested in Cuba on December 4. Gross worked for Development Alternatives, a contractor for the U.S. Agency for International Development (USAID) program whose mission is "to promote a peaceful transition to democracy in Cuba by assisting the development of Cuban civil society."

The U.S. government's recently allocated \$20 million budget to the USAID program – established under the 1996 Helms-Burton Act – demonstrates that Washington's 51-year-old obsession to oust the Castro regime is alive and well.

If anything, Gross' USAID activities and subsequent arrest impede any prospects for improved U.S. – Cuba relations.

Peters, from the Lexington Institute, said that even if the Obama administration were interested in making changes in U.S. policy towards Cuba, "they couldn't do it in response to this arrest."

Cuban officials expressed willingness to continue talks in the future but condemned the U.S. delegation's decision to meet with government opponents in Havana later that day.

In 2007, the U.S. Interests Section in Havana failed to fulfill the required annual 20,000 visas promised in the migration agreement of 1994.

The U.S. blamed the deficiency on Cuba's obstruction of supply shipments to the Interests Section and said Cuba refused to let them hire adequate staff. Cuba held the Interests Section

accountable, saying that the office had imported over 80 tons of materials the previous year and was funneling money and supplies to Cuban government opponents.

State Department data on visas issued through the office since 1994 is ambiguous but U.S. officials maintain that 2007 was the only shortfall.

Dan Erikson, senior associate for U.S. policy at the Inter-American Dialogue and author of *The Cuba Wars: Fidel Castro, the United States, and the Next Revolution*, said, "After 50 years, the United States and Cuba are like two countries stuck in a bad marriage. They don't communicate, they have serious fights, they have small fights which they blow out of proportion."

But, he said, "There's a lot of economic, political and cultural linkages between the two ... despite the hostility of the governments ... What could be useful is to enhance dialogue and cooperation between the United States and all sectors of Cuban society."

Peña, from the International Institute, addressed an issue that hasn't garnered any attention in the mainstream media. "The contemporary application of the Cuban Adjustment Act is also exasperating racial inequalities," she said. "90 percent of the exile community is white, meaning that this migration trend is favoring the white migrant over the Afro-Cuban migrant."

Peña said the policy also contributes to racial disparities on the island. "If you have family that's going to send you money, that makes a big difference ... And so, the whiter and whiter that the émigré community gets, the poorer and poorer the Afro-Cuban community gets in comparison to their white compatriots in Cuba."

### **Cuban American Politics**

Erikson said the reason the Cuban Adjustment Act "still remains in effect, in essence, 44 years later has a lot to do with the political influence of the Cuban American community and their ability to maintain special immigration status."

Peters offered a similar rationale. He said U.S. officials "don't want to be in a political position

where people in the Cuban American community are attacking them for a decision to return all Cuban migrants to Cuba."

Peña also attributed the policy's continuation to the Cuban American lobby. "These people are so involved in politics," she said. "That's my answer. I feel like that Act is still in place for just that sole purpose... it went from being a foreign policy tool to easing domestic tensions within the electorate."

Peña said at the time the wet/foot dry foot policy was implemented in 1995, U.S. officials had no idea that thousands of Cubans would arrive through Mexico.

When González crossed the border on April 9, the Customs and Border Protection agent told him that twenty-five Cubans had crossed at the same time the previous day. "She told me, 'Wow, you're the first today!'" González said.

The agent explained to González that U.S. officials no longer detain Cubans for three days like they did several years ago. Instead, she told him, they have made the process easier so that Cubans who cross the border are now paroled on the same day.

"She told me, 'You can go home, welcome to the U.S.A.,'" González said. "Very friendly people, really."