

The United States and Cuba: A New Policy of Engagement



Yamil Lage, AFP

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Geoff Thale, President, WOLA
Marguerite Jiménez, Director for Cuba and Special Initiatives, WOLA
María José Espinosa Carrillo, Deputy Director, CDA

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The Case for Engagement

The United States needs a new policy of engagement with Cuba that serves U.S. interests and those of the Cuban people.

The reasons for engagement are the same as they were when the Obama administration introduced its policy on December 17, 2014. The old policy of hostility had outlived whatever usefulness it may have had and was not working. It was not improving democracy or human rights on the island, it was not advancing U.S. geopolitical interests, and it was blocking progress on issues of mutual interest. Instead, the policy of hostility increased hardship for the Cuban people, alienated our allies in Latin America and Europe, excluded U.S. businesses from competing in the Cuban market, and opened the door for our global competitors Russia and China to expand their influence.

A new policy of engagement should be built on a framework of objectives that advance the interests of the United States and those of the Cuban people.

Engagement begins with constructive diplomacy that includes cooperation on issues of mutual interest and negotiations on issues in conflict.

To begin re-engaging the Cuban government, we must reopen the lines of diplomatic communication between the United States and Cuba that President Donald Trump shut down. Diplomatic engagement will reduce bilateral tensions, help avoid future crises, and advance U.S. interests on a wide variety of issues. Like it or not, many of the most critical problems we face in the Western Hemisphere are transnational—the effects of climate change, the spread of infectious disease, environmental pollution, narcotics and human trafficking, and migration. Progress depends on cooperation with our neighbors, especially near neighbors like Cuba. Even on issues where U.S. and Cuban interests conflict, like Venezuela, engaging with Cuba may be a necessary condition of reaching a solution.

Engagement is a more effective strategy to advance the cause of human rights, political liberty, and economic reform.

Trump's policy of hostility and confrontation made the human rights situation in Cuba worse not better. It aggravated the regime's siege mentality, gave it an excuse to crackdown on dissidents and other independent voices, and provided a convenient scapegoat for Cuba's worsening economy. A strategy of engagement can strip away those excuses, create an international environment that makes it beneficial for Cuban leaders to allow greater political and economic freedom on the island, and foster a more vibrant civil society that will, in time, press for change. A strategic shift in U.S. policy will find broad support among our allies, most of whom are already pursuing policies of engagement, and would welcome a U.S. policy that makes cooperation possible, especially on human rights.

Engagement must include civil society-- cultural, educational, scientific, and familial linkages that foster mutual understanding, reconciliation, and cultural enrichment for both peoples.

People-to-people contacts benefit the people of both countries, most especially the Cuban and Cuban American families with relatives on both sides of the Florida Straits. The cultural connections between the United States and Cuba date back at least 150 years and should be nourished, not starved. The Trump administration did its best to sever these connections, inflicting serious economic hardship on the Cuban people. Foreign visitors put money directly into the hands of Cubans through private restaurants, independent taxis, and rentals of private rooms. No other international economic flow except remittances has such a direct, immediate benefit for the standard of living of Cuban families. A vibrant civil society relationship will empower the Cuban people and lay the foundation for enduring reconciliation.

Engagement will facilitate commercial ties, expanding the market for U.S. businesses, raising the standard of living for the Cuban people, and encouraging economic reform.

Cuba and the United States are natural economic partners by virtue of their proximity. By easing restrictions on trade and investment with the Cuban non-state sector and with state enterprises producing goods and services that directly benefit the Cuban people, the U.S. government can help foster prosperity and greater economic freedom. Cuba is undergoing an economic reform process, slowly moving toward a more open economy—a change that the United States should favor, encourage, and support.

Engagement will serve as a counterweight to the aspirations that global competitors like Russia and China have in Cuba.

As U.S. hostility and economic sanctions increased during the Trump administration, Cuba has turned toward our global rivals, just as it did during the Cold War. Russia and China have both increased their economic assistance and investment in Cuba and begun to build strategic alliances. U.S. Southern Command has identified Russian and Chinese initiatives as one of the main strategic challenges the United States faces in Latin America. The United States has more in common culturally with Cuba and more to offer economically than either Russia or China if we pursue a policy of engagement.

Cuba is changing. A new generation of leaders, born after the 1959 revolution, is taking the reins of power. In April 2021, Raúl Castro will step down as First Secretary of the Cuban Communist Party, surrendering his last official position. The economy is changing. The reform process begun in 2011 has moved slowly, but accelerated in the past year, creating greater economic diversity and openness. Civil society is changing, spurred in large part by the expansion of the Internet, which has enabled people to create virtual social networks that are manifesting themselves in real world gatherings and, occasionally, protests.

The United States can have a positive influence on the trajectory of change, but only by being engaged. To continue the policies of the past or to simply modify them at the margins will leave the United States out of the game—isolated from its allies, isolated from ordinary Cubans other

than small groups of dissidents, and isolated from the rising generation of Cuban leaders who will shape the island's future.

Engagement accomplished more in two years than the policy of hostility achieved in sixty.

- The negotiations leading to December 17, 2014, resulted in the release of 53 political prisoners and a Cuban commitment to expand the Internet, thereby increasing access to information. Today, 5.3 million Cubans—nearly half the population—have cell phones and 2.5 million have 3G or 4G Internet access.¹
- Diplomatic relations were restored after 63 years, and in the next 18 months 22 additional bilateral agreements on issues of mutual interest were signed, ranging from law enforcement cooperation to environmental protection (listed in the Appendix).
- The United States and Cuba began dialogues on human rights and property claims.
- Commercial relations were reestablished, with over 40 U.S. businesses signing contracts with Cuba during the last two years of the Obama administration.
- Cultural and educational exchanges expanded dramatically. The number of non-family U.S. visitors to Cuba increased between 2014 and 2017 by more than 600% from fewer than 100,000 to over 600,000.²
- Family ties between Cubans and Cuban Americans were strengthened. The number of Cuban American visitors to Cuba increased between 2014 and 2017 by 27% to over 300,000. Cash remittances climbed to an estimated \$3.5 billion annually, with another \$3 billion in goods carried by visitors, fueling the explosive growth of Cuba's emerging private sector.³

A Roadmap for Engagement

A successful policy has to make both policy sense (serve the national interest and realistically match capabilities to goals) and political sense (have enough support from relevant stakeholders to be sustainable). We begin by examining some critical preliminary questions:

- Why should Cuba be a priority when so many other urgent issues demand attention?
- After four years of U.S. hostility, is Cuba still interested in better relations?
- What do key stakeholders think about this contentious domestic political issue?
- How can a new policy of engagement surmount the obstacles of Cuba's support for the Venezuelan government and the unsolved mystery of the injuries to U.S. personnel serving in Cuba?

With this groundwork laid, we present a roadmap for a new policy of engagement, in three stages:

1. **Repairing the Damage:** In the first few months of the new administration, reverse the damage done by President Trump's use of executive authority to "cancel" President Obama's opening.

¹ Patrick Oppmann, "Cubans get internet on cellphones, but how many can afford it?" CNN, December 6, 2018; Cristina Abellan Matamoros, "Cubans now allowed to access the internet from their own homes, but at what price?" AFP, July 29, 2019.

² Oficina Nacional de Estadísticas e Información (ONEI), *Serie Estadística, Anuario Estadístico de Cuba, Capítulo 15: Turismo*, edición 2019 (Havana, Cuba: ONEI, 2019).

³ Havana Consulting Group, "Remesas, ¿una ruta de inversión para los cubanos?" 27 Septiembre 2019.

2. **Taking the Initiative:** Identify and implement additional steps to advance the policy of engagement to a new level using the president's executive authority.
3. **Finishing the Job:** Seek to change statutes that have written sanctions against Cuba into law, constraining the president's constitutional authority to direct U.S. foreign policy.

Why Should Cuba Be a Priority?

The next president will face an unprecedented confluence of crises: the COVID-19 pandemic, the worst economic recession since the 1930s, and demands for long-overdue racial justice. Every liberal and progressive policy network in the United States will have an agenda of change to repair the damage done by Donald Trump. Why should Cuba be near the top of the President's agenda? After all, Cuba is a small country that poses no real threat to the United States, despite more than half a century of antagonism.

There are several good reasons for the President to move quickly to re-engage with Cuba.

The first is the crisis in Venezuela, which is the most urgent humanitarian issue facing Latin America. The pressure it is putting on neighboring countries demands immediate action, and President Trump's failed policy of regime change has only made matters worse. Like it or not, a political solution to the Venezuelan crisis will require international cooperation among actors with different interests, including Cuba and the United States. Re-engaging with Cuba is a necessary (though not sufficient) component of a workable policy toward Venezuela, just as it was a necessary condition for ending the conflict in southern Africa in the 1980s.

Second, the United States is scheduled to host the Ninth Summit of the Americas in late 2021, a decision-forcing event that will require the new administration to formulate its overall approach to Latin America, including Cuba, earlier than it might otherwise. Moreover, the Summit provides an opportunity for the President to meet Cuban President Miguel Díaz-Canel to underscore the U.S. interest in improving relations. That meeting would be most productive if the new administration has already taken measures to repair the damage done to relations over the past four years. The United States halted engagement; it will be up to the United States to take the first steps toward restoring it.

Third, re-engaging with Cuba is relatively easy. Because every sanction President Trump imposed on Cuba was imposed by executive authority, every one of them can be reversed with a stroke of the President's pen. Most, in fact, could be reversed in a single package simply by returning the Cuban Assets Control Regulations (CACR) to their status on January 20, 2017. Other actions on the diplomatic front require inter-agency coordination, but the basic principles of re-engagement can be laid out quickly because they were well-defined during the Obama administration in the President's October 14, 2016 policy directive.⁴

⁴ The White House, "Presidential Policy Directive -- United States-Cuba Normalization," October 14, 2016, <https://obamawhitehouse.archives.gov/the-press-office/2016/10/14/presidential-policy-directive-united-states-cuba-normalization>

Finally, Cuba is a high profile foreign policy issue, perhaps more so than Cuba's intrinsic importance would dictate. President Obama's 2014 opening to Cuba attracted global attention and praise as an historic event. One reason for Cuba's high profile is the long history of crises: The Bay of Pigs, the Missile Crisis, Cuba's partnership with the Soviet Union, its export of revolution to Africa and Latin America, and periodic mass migrations. Another is the Cuban American diaspora, which cares deeply about U.S.-Cuban relations, whether for or against. Quick action to re-engage with Cuba will send the message that the President intends to have an active foreign policy, re-engaging with both allies and adversaries, and rebuilding U.S. stature in the world.

Is Cuba Still a Willing Partner?

A diplomatic tango takes two. In 2014, "the stars were aligned," as Ben Rhodes put it; the United States and Cuba both had reasons to favor normalization. After two years of punishment by the Trump administration, is Cuba still interested in engagement? **Cuba's political and economic conditions have changed since President Obama and President Castro announced their intention to normalize relations, but the structural economic incentives that led Cuba to support normalization are still in place.**

On the political front, Miguel Díaz-Canel has replaced Raúl Castro as president and will replace him as First Secretary of the Communist Party in April 2021. Castro's prestige was such that he could decide to engage with the United States despite skepticism among some members of the leadership. Díaz-Canel is not likely to have the same authority, despite his titles, but Raúl Castro will retain some authority even in retirement. The Cuban leadership's ambivalent attitude toward normalization is complicated by the loss of trust resulting from President's Trump's reversal of the gains made during the Obama opening. Cuban hardliners who warned that Washington could not be trusted were proved right.

On the economic front, Cuba is in much worse shape now than it was in 2014, principally because of the shutdown of the tourism industry due to the COVID-19 pandemic. Although President Trump's 2019 restrictions on U.S. travel had the potential to reduce Cuban tourism by 10-15%, the pandemic closed the industry entirely. At the same time, revenue from Cuban medical missions abroad has declined, due to Venezuela's economic collapse and U.S. pressure on other governments to expel Cuban doctors. An estimated decline of 10% in Cuba's 2020 GDP led the government to introduce a series of new economic reforms in July adopting a more market orientation in agriculture and strengthening the non-agricultural private sector.

The principal incentive Raúl Castro had for seeking normal relations with the United States was economic. His plans to reform the Cuban economy in the direction of market socialism, unveiled in 2011, have been difficult to execute in an environment of economic austerity and a perceived security threat from the United States. A better relationship with the United States held the prospect of more revenue from tourism, more remittances, more trade, and more foreign direct investment. The results from 2014 to 2016 indicated that these assumptions were correct; travel, remittances, and commercial contracts all increased. Tourism (post-COVID) and remittances will remain two of Cuba's main sources of foreign exchange earnings for the foreseeable future, and the United States is an important source of both. Although Cuba's leadership is changing and will be skeptical

of U.S. intentions, the structural economic incentives that led Raúl Castro to seek normal relations with the United States are even stronger than they were in 2014.

Is Cuba a reliable partner? Will Cuban leaders keep their end of the bargain? The short answer is yes. Cuba has a good record of adhering to the letter of agreements made with the United States over the years. Cuba met the terms of the December 2014 agreement to normalize relations and of the subsequent bilateral agreements signed with the Obama administration, though most of them have yet to be carried out because the Trump administration broke off contact. Notably, throughout the Trump administration, Cuban leaders continued to insist that they are open to improving relations with the United States on the basis of mutual respect. Nevertheless, to overcome Cuban suspicions, **a new U.S. administration will need to make a concerted effort to rebuild a measure of trust, which means taking the initial steps to re-start the process.**

The Politics of Engagement: Stakeholders

President Obama's decision to replace the failed policy of hostility with a policy of engagement was broadly popular with the general public (including Republicans), the business community, and many Cuban Americans. The only vocal opponents were some Republican members of Congress and conservative Cuban Americans, including some influential Democratic lawmakers. **A new policy of engagement entails relatively little political risk and the potential to mobilize a wide variety of constituencies in support.**

U.S. Public Opinion

From December 2014 to 2017, poll after poll showed that the policy of engagement with Cuba was widely popular, and favorable opinion grew as the policy unfolded over those two years. A CBS-New York Times poll taken right after the December 17, 2014 announcement found that 54% of the public approved of both reestablishing diplomatic relations and allowing trade with Cuba, while only 28% disapproved. A CNN poll found 63% in favor of diplomatic relations and 55% in favor of ending the embargo. A Washington Post-ABC News poll found 64% in favor of restoring relations and 68% in favor of lifting the embargo.⁵

Seven months later, support for Obama's policy had grown, with 73% of the public in favor of diplomatic relations and 72% in favor of ending the embargo, according to a Pew Research poll. A majority of Republicans agreed (56% and 59% in favor respectively), as did even self-identified conservative Republicans (52% and 55% in favor).⁶ A Chicago Council on Foreign Relations poll in 2015 produced similar results: 67% of the public supported ending the trade embargo with Cuba, including 8 in 10 Democrats, 6 in 10 Independents, and 6 in 10 Republicans. The results led the

⁵ Sarah Dutton, Jennifer de Pinto and Anthony Salvanto *et al.*, "How Do Americans Feel about Reestablishing Relations with Cuba?" *CBS News*, December 22, 2014; Jeremy Diamond, "CNN/ORC Poll: Americans side with Obama on Cuba," *CNN*, December 23, 2014; Scott Clement, "Poll: Support Increases for Lifting Cuba Embargo, Travel Restrictions," *Washington Post*, December 23, 2014.

⁶ Jacob Poushter, "People in U.S., Latin America approve of renewing U.S. ties with Cuba," Pew Research Center, August 14, 2015.

Council to conclude, “The issue of normalizing diplomatic relations with Cuba seems to be more of a problem for a handful of politicians and a vocal minority of the public than it is for the American public at large.”⁷

As President Obama’s term was coming to a close in December 2016, support for his Cuba policy remained strong, with 75% in favor of diplomatic relations and 73% in favor of lifting the embargo. Republican support had risen to 62%, and conservative Republican support to 57% on both issues.⁸ Even after President Trump promised to reverse Obama’s Cuba policy, public support for engagement persisted. A Morning Consult national poll in May 2017 found that 65% of the public supported Obama’s policy changes and only 18% opposed them. Sixty-one percent of the public favored ending the embargo. Republicans still supported Obama’s policy by a margin of 64% to 21%, and 55% of Republicans favored ending the embargo.⁹

Cuban American Opinion

Cuban Americans are the one constituency for whom the issue of U.S.-Cuban relations is salient enough to influence their vote. Polling by Florida International University since 1991 has chronicled the evolution of Cuban American attitudes in south Florida. By 2014, before Obama’s announcement, 68% favored the reestablishment of diplomatic relations.¹⁰ Shifting attitudes manifested themselves at the ballot box. In 2008, running on a policy favoring dialogue with Cuba, Obama won 35% of the Cuban American vote, more than any Democrat except Bill Clinton in 1996. In 2012, after loosening restrictions on travel and remittances, statewide exit polls showed Obama winning the Cuban American vote, 49% to Romney’s 47%, or losing it narrowly, 48% to Romney’s 52%. No Democrat had ever done so well.¹¹

Cuban American reaction to Obama’s opening to Cuba reflected the community’s changing attitudes. A Bendixen & Amandi International national poll in March 2015 found 51% of Cuban Americans in support of normalization and a plurality of 47% in favor of lifting the embargo. By December, a year after Obama’s announcement, Cuban Americans supported normalization (56% in favor, 36% opposed) and lifting the embargo (53% in favor, 31% opposed). Even those living in Florida supported Obama’s policy (52% in favor, 40% opposed).¹² An FIU poll in the summer

⁷ Chicago Council on Foreign Relations, *America Divided: Political Partisanship and US Foreign Policy* (Chicago: CCFR, 2015).

⁸ Pew Research Center, “Growing Public Support for U.S. Ties with Cuba – And an End to the Trade Embargo,” July 21, 2015; Alec Tyson, “Americans Still Favor Ties with Cuba after Castro’s Death, U.S. Election,” Pew Research Center, December 13, 2016.

⁹ Morning Consult, “Cuba Engage Polling Presentation,” June 12, 2017, <https://www.engagecuba.org/press-releases/2017/6/12/new-poll-6-in-10-republicans-support-policies-of-cuba-engagement>.

¹⁰ Guillermo J. Grenier and Hugh Gladwin, *2014 FIU Cuba Poll: How Cuban Americans in Miami View U.S. Policies Toward Cuba* (Miami, FL: FIU Cuba Research Institute, 2014).

¹¹ Mark Hugo López and Paul Taylor, “Latino Voters in the 2012 Election,” *Hispanic Trends*, Pew Research Center, November 7, 2012; Sergio Bendixen, “Comment on Brian E. Crowley, ‘Little Havana Turns Blue (Or Maybe Not)’,” *Columbia Journalism Review*, November 14, 2012; Juan O. Tamayo, “Did Obama or Romney Win the Cuban-American Vote?” *Miami Herald*, November 12, 2012.

¹² Bendixen & Amandi International, *Polling Results on Cuban Americans’ Viewpoint on the Cuba Opportunity*, Miami: 2015; Bendixen & Amandi International, *Survey of Cuban-Americans: One Year After the Normalization of United States-Cuba Relations* (Miami: 2015).

of 2016, after Obama’s trip to Cuba, found that support for a policy of normalization had grown to 56% and support for ending the embargo to 54%.¹³

In 2016, Trump improved on Mitt Romney’s showing among Cuban Americans, winning between 52% and 54% by promising to reverse Obama’s opening to Cuba.¹⁴ After he announced his policy of hostility and regime change, support for a tough policy among Cuban Americans in south Florida rebounded. A July 2020 FIU poll found that support for the embargo has risen to 60%, even though 71% did not believe it was working. Nevertheless, large majorities favored maintaining diplomatic relations (56%), U.S. policies to improve the well-being of the Cuban people (66%), sales of food (66%), and sales of medicine (71%).¹⁵ The 2020 Trump campaign narrowly out-performed his 2016 showing among Cuban Americans, winning about 56%.¹⁶ However, the crux of its appeal was not an attack on the Biden campaign’s low profile support for re-engagement with Cuba, but Trump’s success, via disinformation campaigns and otherwise, at branding Democrats as socialists who would wreck the U.S. economy.

Many of the leaders in the Cuban American community who were outspoken supporters of President Obama’s policy have been quiet in the face of President Trump’s reversal of it—not because they no longer support engagement, but because they saw limited space for their voices to make a difference. A well-designed messaging campaign to explain the new policy to the Cuban American community is key to building a politically durable policy. **In the first 100 days, a presidential representative should meet with sympathetic members of the Cuban American community, asking for their support for a new policy of engagement and listening to what issues are of special importance to them.**

The Foreign Policy Establishment

A bipartisan cross-section of the foreign policy and national security community supported President Obama’s opening to Cuba on the grounds that the old policy was an ineffective remnant of the Cold War that was damaging U.S. relations with allies, especially in Latin America. Polling by the Chicago Council on Foreign Relations found that foreign policy “opinion leaders” have been in favor of lifting the embargo on Cuba for over a decade; as far back as the Council’s 2004 poll, 80% of opinion leaders favored opening trade with Cuba.¹⁷

In May 2014, 46 luminaries of the policy and business world signed an open letter urging President Obama to adopt a policy of engagement with Cuba. The signatories included former diplomats, retired military officers, and Cuban American businessmen, among them Ambassador Thomas Pickering, Admiral James Stavridis, sugar magnate Andres Fanjul, and John Negroponte, President

¹³ Guillermo J. Grenier and Hugh Gladwin, *2016 FIU Cuba Poll: How Cuban Americans in Miami View U.S. Policies Toward Cuba* (Miami, FL: FIU Cuba Research Institute, 2016).

¹⁴ Cristina Lopez-Gottardi, “The Complex Cuban Vote,” *U.S. News and World Report*, November 16, 2016.

¹⁵ Guillermo J. Grenier and Qing Lai, *2020 FIU Cuba Poll: How Cuban Americans in Miami View U.S. Policies Toward Cuba* (Miami, FL: Florida International University, 2020), <https://cri.fiu.edu/research/cuba-poll/>.

¹⁶ “Florida Exit Polls: How Different Groups Voted,” *New York Times*, <https://www.nytimes.com/interactive/2020/11/03/us/elections/exit-polls-florida.html>.

¹⁷ Chicago Council on Foreign Relations, *Global Views 2004: American Public Opinion and Foreign Policy* (Chicago, IL: CCFR, 2004).

George W. Bush's first director of national intelligence.¹⁸ In January 2015, 78 former government officials and opinion leaders, including David Rockefeller and George Shultz, Ronald Reagan's Secretary of State, signed a second letter congratulating Obama on his opening to Cuba, noting "the broad support these changes have from across the political spectrum."¹⁹

A few months after Donald Trump's inauguration, 16 retired senior military officers sent National Security Advisor H.R. McMaster an open letter urging the administration to maintain engagement with Cuba because it would "provide long-term national security benefits to the United States," citing successful cooperation on counter-terrorism, border control, drug interdiction, and environmental protection. "If we fail to engage economically and politically," they warned, "it is certain that China, Russia, and other entities whose interests are contrary to the United States' will rush into the vacuum."²⁰ Their warning was prescient; both Russia and China have significantly upgraded relations with Havana since the United States pulled back.

According to press reports, when the Trump administration convened an inter-agency meeting in May 2017 to discuss the results of its review of Cuba policy and make recommendations to the president, virtually every agency reported that the policy of engagement was working well in their area of responsibility and ought to be continued.²¹

The Business Community

There is broad support in the U.S. business community for expanding commercial ties with Cuba, as evidenced by the excitement over the opportunities President Obama's policy opened up. In 2015-2016, a parade of trade delegations visited Havana, nine of them led by sitting governors, both Republican and Democratic. New York's governor Andrew Cuomo was the first, taking a group of 20 business leaders in April 2015. He was followed by governors representing Gulf states with trade ports (Louisiana, Texas, and Mississippi), and states hoping to export agricultural goods (Missouri, Virginia, Arkansas, Colorado, and West Virginia). Legislators and local officials led other trade delegations from Alabama, California, Kentucky, Illinois, Indiana, New Mexico, North Carolina, Ohio, Florida, and Washington, D.C.

In March 2015, the U.S. Agriculture Coalition for Cuba—a broad-based group promoting agricultural trade since 2013—took 95 people to Cuba, including two former secretaries of agriculture. The U.S. Chamber of Commerce, which has supported ending the U.S. embargo since the 1990s, launched the U.S.-Cuba Business Council representing over two dozen major corporations, including Caterpillar, Kraft Heinz, Sprint, Boeing, Home Depot, and American Airlines. By 2017, ports in Virginia, Alabama, and Mississippi had signed agreements with Cuba to explore opportunities for increasing trade. Florida ports at Tampa Bay, Palm Beach, and the

¹⁸ Support Cuban Civil Society, "Open Letter to President Obama: Support Civil Society in Cuba," May 19, 2014, <http://www.american.edu/clals/upload/Open-Letter-to-President-Obama.pdf>.

¹⁹ Support Cuban Civil Society, "Open Letter to Obama: Support for a New Course on Cuba," January 19, 2015, <http://www.as-coa.org/articles/open-letter-president-obama-support-new-course-cuba>.

²⁰ American Security Project, "Letter to Lieutenant General H.R. McMaster," April 20, 2017, <https://static1.squarespace.com/static/55806c54e4b0651373f7968a/t/58f8dc14ebbd1aed9edd0360/1492704289283/Cuba+Security+Letter>.

²¹ Melanie Zanona, "Trump Weighs Shift on Cuba," *The Hill*, May 31, 2017.

Everglades were in negotiations with Havana when they were forced to withdraw by Governor Rick Scott. Since 2000, when the sale of agricultural products was legalized, almost 100 U.S. companies have exported goods to Cuba, and since Obama's opening in 2014, about four dozen new commercial agreements had been signed between U.S. and Cuban companies as of early 2017.²²

The agricultural, hospitality, and telecom industries lobbied President Trump in defense of commercial engagement. In January 2017, over 100 agricultural businesses and associations signed a letter to him in support of engagement. In May, 46 travel companies signed a letter asking him not to tighten travel restrictions. In May 2017, after traveling to Cuba, Jay Timmons, CEO of the National Association of Manufacturers (NAM), added his voice, calling for an end to the embargo.²³ Business reaction to Trump's June 2017 announcement of a return to hostility was uniformly negative. The U.S. Chamber of Commerce lamented the new constraints on business opportunities. "U.S. private sector engagement can be a positive force for the kind of change we all wish to see in Cuba," it said in a statement reacting to the new sanctions. "Today's moves actually limit the possibility for positive change on the island." The American Farm Bureau, the U.S. Grains Council, the National Corn Growers Association, the Rice Growers Association, and the U.S. Agriculture Coalition for Cuba all criticized the sanctions.²⁴

The severe restrictions President Trump imposed on travel to Cuba have hurt the hospitality industry, airlines, and cruise ship companies in particular. The activation of Title III of the Cuban Liberty and Democratic Solidarity Act has led to more than two dozen lawsuits, most of which target U.S. businesses, including all the major cruise lines, American Airlines, TripAdvisor, Expedia, and Amazon.

Removing U.S. economic sanctions would enable U.S. businesses to compete in the Cuban market with the advantages of proximity, brand familiarity, and superior technology. An end to travel restrictions would facilitate the rebuilding of the Cuban private sector, which could become a major force for economic reform under the right circumstances. **Early on, the new administration should consult with the U.S. Chamber of Commerce, the U.S.-Cuba Business Council, and**

²² U.S. Cuba Trade Council, "List Of U.S. Companies That Have Exported Products To Cuba," March 27, 2017, (<https://www.cubatrade.org/blog/2017/3/26/qdesppj3hx4akhn0hxre0avlms79nv>), and "U.S. Companies with a Presence in Cuba Since December 14, 2017," (<https://static1.squarespace.com/static/563a4585e4b00d021e8dd7e/t/5c2e41b370a6ad1b09a6dee4/1546535347973/USCompaniesAndCuba.pdf>).

²³ Engage Cuba, "Over 100 U.S. Agriculture Groups Urge Trump to Strengthen U.S.-Cuba Trade Relationship," press release, January 13, 2017, <https://www.engagecuba.org/press-releases/2017/1/13/over-100-us-agriculture-groups-urge-trump-to-strengthen-us-cuba-trade-relationship>; Kari Paul, "40 Travel Companies Ask Trump Not to Reinstate Cuba Travel Restrictions" *MarketWatch*, May 26, 2017, <http://www.marketwatch.com/story/40-travel-companies-ask-trump-not-to-reinstate-cuba-travel-restrictions-2017-05-24>; Jay Timmons, "American Values, Manufacturing Have a Place in Cuba," May 15, 2017, Shopfloor blog, National Association of Manufacturers, <http://www.shopfloor.org/2017/05/american-values-manufacturing-have-a-place-in-cuba/>.

²⁴ U.S. Chamber of Commerce, "U.S. Chamber Statement on Administration's Cuba Policy Announcement" June 16, 2017, <https://www.uschamber.com/press-release/us-chamber-statement-administration-s-cuba-policy-announcement>; Kery Murakami, "Farmers Say Trump's Cuba Policy Hurts Them," *Richmond Register*, July 2, 2017.

the U.S. Agriculture Coalition for Cuba to discuss how the U.S. government can facilitate expanded commercial relations with Cuba.

Congress

Not surprisingly, congressional reaction to President Obama's opening to Cuba split roughly along partisan lines, with Republican presidential aspirants opposing it most vocally. Nevertheless, there were some Democratic critics who either opposed the opening or whose support was lukewarm. On the other side of the aisle, a small contingent of Republicans, including farm state Republicans, applauded the opening. Republicans blocked the nomination of Ambassador Jeffrey DeLaurentis from being considered, but failed to get enough support to reject the President's removal of Cuba from the list of state sponsors of international terrorism. Most of the members who have played an active role on the Cuba issue, both pro and con, will be returning in the 117th Congress. With presidential leadership, there could be majority support for re-engagement.

In the first 100 days, The President should meet with selected members of Congress, including Democrats and Republicans who support engagement (e.g., the Cuba Working Group in the House), to ask for their support. In a separate meeting, he should meet with Democratic members who oppose engagement or are skeptical of it. He should let the members know he intends to reach out to Cuba to resume engagement, that the safety of U.S. diplomats and the issue of Venezuela will be at the top of his agenda, but that he is not setting any preconditions because re-engagement is in the best interests of the United States.

U.S. Allies

Obama's policy of engagement was widely hailed by U.S. allies in Latin America and Europe. Trump's return to a policy of hostility has found almost no support globally except for conservative governments in Brazil and Colombia. The annual United Nations vote on a Cuban resolution condemning U.S. economic sanctions indicates the extent of U.S. isolation. In November 2019, for the 28th year in a row, the resolution passed overwhelmingly, 187 in favor, 3 opposed (the United States, Israel, and Brazil) and 2 abstentions. Moreover, no other country in the world participates in the U.S. embargo on Cuba, a key reason for its ineffectiveness.

U.S. trading partners are especially angry with the Trump administration's decision to activate Title III of the Cuban Liberty and Democratic Solidarity Act because its extraterritorial reach opens their companies doing business with Cuba to lawsuits in U.S. federal courts. Canada, Mexico, and the European Union have all adopted blocking statutes that prohibit compliance with Title III by their companies, and the EU has threatened to file a complaint with the WTO. A return to a policy of engagement would defuse these tensions and allow closer cooperation with our allies on a range of issues involving Cuba, most importantly, the defense of human rights.

The Cuban People

No one suffers more from U.S. economic sanctions than the Cuban people. An independent poll commissioned by the *Washington Post*, and conducted in Cuba in March 2015 found that 97% of

Cuban respondents thought better relations with the United States were “good for Cuba.” (48% of these same respondents expressed unfavorable opinions of Raúl Castro.) A November 2016 poll in Cuba by NORC (formerly the National Opinion Research Center) at the University of Chicago found that 55% of Cubans thought normalization would be good for Cuba, and only 3% thought it would be bad (26% thought it wouldn’t make much difference).²⁵ President Obama received such a warm welcome from Cubans during his 2016 visit that Fidel Castro felt compelled to warn people that the United States was still trying to subvert the revolution.

The entrepreneurs in Cuba’s growing private sector have been especially hard hit by the Trump administration’s sanctions. Many of them depend on Cuban American relatives for both financing and for their supply chain since Cuba has no wholesale markets. The most numerous and successful of these businesses are in the tourist sector where U.S. visitors were a critical customer base. In 2017, more than 100 Cuban entrepreneurs wrote a letter to President Trump asking him not to cut off these lifelines.²⁶ In an independent poll of 126 business owners in Havana conducted in fall 2019 after Trump curtailed people-to-people travel, 80% of owners reported their business was suffering as a result of the sanctions. The damage went beyond just the businesses catering to U.S. visitors; the negative multiplier effect also hurt businesses serving the Cuban market.²⁷ When word of Biden victory reached Cuba, spontaneous celebrations erupted in the streets of Havana.²⁸

Two Obstacles to Engagement

The new administration will have to address two significant political obstacles to re-engagement: the still-unsolved mystery of what caused the injuries to U.S. diplomats and others serving in Havana; and the crisis in Venezuela.

Injuries to U.S. Personnel in Havana

The U.S. Embassy in Havana has operated with limited staff since September 2017 when most personnel were recalled because of reported injuries to some two dozen of them. Shortly after the withdrawal, the Trump administration ordered the departure of two-thirds of the Cuban diplomats in Washington to “ensure equity in our respective diplomatic operations.” Despite investigations by the FBI and the Cuban government, the cause of the injuries has yet to be identified, making it difficult to say definitively whether it is safe to fully re-staff the embassy. A Canadian investigation pointed to neuro-toxins as the cause of similar injuries to Canadian personnel, perhaps as a result

²⁵ Joshua Partlow and Peyton M. Craighill, “Poll shows vast majority of Cubans welcome closer ties with U.S.,” *Washington Post*, April 8, 2015; NORC at the University of Chicago, *A Rare Look Inside Cuban Society: A New Survey of Cuban Public Opinion* (Chicago: NORC, 2017), <https://www.norc.org/Research/Projects/Pages/survey-of-cuban-public-opinion.aspx>.

²⁶ James Rosen, “Cuban entrepreneurs to Trump: Don’t abandon us,” *Miami Herald*, December 7, 2016.

²⁷ Oniel Díaz, *Impact of the U.S. government policy towards Cuba on the private sector (2017-2019)* (Havana: Cuba 2019).

²⁸ Nelson Acosta, “Cubans applaud Biden win, hope for easing of sanctions,” *Reuters*, November 7, 2020.

of insecticides used during the 2016 Zika epidemic.²⁹ But the circumstances surrounding the Canadian and U.S. cases were not identical. A National Academy of Sciences report concluded that “directed, pulsed radio frequency energy” was the most likely cause of the neurological symptoms experienced by U.S. diplomats in Cuba, China, and Russia, though it did not rule out other possible causes. The report did not identify Russia or any other actor as responsible.³⁰

While there were legitimate concerns about protecting the health and safety of U.S. diplomats, the Trump administration used the unexplained injuries as a convenient political excuse to downgrade diplomatic relations, responding to Republicans in Congress who opposed the reestablishment of relations in the first place. Most of the embassy staff opposed the downsizing of the embassy. Thirty-five diplomats and spouses working there signed a letter to senior State Department officials asking to be allowed to stay at their posts, but were withdrawn regardless.³¹

The President should not allow this unsolved mystery to determine our relationship with Cuba. Returning the U.S. and Cuban embassies to full functionality is a critical first step in a new policy of engagement. How can this be done safely?

- Re-staff the embassy gradually, prioritizing the resumption of consular services, the absence of which has placed the greatest burden on family reunification and cultural exchange.
- Conduct baseline tests and periodic re-tests of U.S. personnel stationed in Havana to quickly identify any new issues.
- Increase security in and around U.S. diplomatic residences.
- Continue efforts to identify the original cause of the injuries by sharing all necessary information with the National Academy of Sciences investigators, resuming cooperation with Cuban investigators, and replicating the Canadian testing protocol on U.S. subjects to ascertain if it yields comparable results.

A fully functioning embassy is essential to pursuing U.S. interests in the relationship with Cuba. The precautions listed above will reduce the likelihood of new cases and provide the ability to quickly identify them if any occur.

The Crisis in Venezuela

The political, economic, and humanitarian crisis in Venezuela is among the most urgent issues in the Western Hemisphere and Cuba’s support for the Maduro government represents both a political obstacle to re-engagement and a diplomatic opportunity.

²⁹ Alon Friedman et al., “Havana Syndrome Among Canadian Diplomats: Brain Imaging Reveals Acquired Neurotoxicity,” *medRxiv: The Preprint Server for Health sciences*, September 29, 2019, <https://www.medrxiv.org/content/10.1101/19007096v1.full.pdf+html>.

³⁰ National Academies of Sciences, Engineering, and Medicine, *An Assessment of Illness in U.S. Government Employees and Their Families at Overseas Embassies*, Washington, D.C., The National Academies Press, December 2020. <https://www.nap.edu/catalog/25889/an-assessment-of-illness-in-us-government-employees-and-their-families-at-overseas-embassies>.

³¹ Tim Golden and Sebastian Rotella, “State Department Likely to Extend Cuts to U.S. Embassy in Cuba,” *ProPublica*, March 1, 2018, <https://www.propublica.org/article/state-department-embassy-cuts-in-cuba>.

Cuba's involvement poses a political problem because Republicans will attack engagement as rewarding Havana despite its support for Maduro. President Obama was careful to separate policy toward Venezuela from policy toward Cuba because engagement serves U.S. interests in and of itself. But foreign policy still needs to rest on a defensible political foundation. Moreover, the Venezuelan crisis is deeper now than it was four years ago.

On the other hand, Cuba's involvement also offers an opportunity. The Trump administration's policy of promoting regime change through economic sanctions has failed, exacerbating the humanitarian crisis caused by the Maduro government's economic mismanagement. U.S. policy should support international efforts to achieve a political settlement leading to free and fair elections, along the lines of the agreement that ended the Nicaraguan civil war in 1990.

As a key supporter of the Maduro government, Cuba will have considerable influence over whether such a solution is possible. **Like it or not, engaging with Havana is a necessary condition for reaching a Venezuelan settlement that works.**

Under the right conditions, Cuba can play a constructive role. Havana contributed to the talks that ended the war between Angola and South Africa in the 1980s, to the peace agreements in Central America in the 1990s, and, in partnership with Norway, to the Colombian peace accord negotiated in Havana in 2016. Cuban officials have indicated on several occasions that Cuba would support a negotiated settlement in Venezuela acceptable to the parties and supported by the United States. Press reports indicate that Cuba played a key role in the 2019 negotiations, hosting initial conversations between the Maduro government and opposition.³² **The State Department should engage with Cuba to assess whether Havana is willing to support a viable international mediation effort aimed at resolving the Venezuelan crisis through free and fair elections.**

Re-engagement with Cuba should not be made conditional on progress in Venezuela or on an end to Cuban support for Maduro. Re-engaging with Cuba is the right foreign policy because it serves a wide range of U.S. interests, despite the Venezuelan conflict. But re-engaging will create conditions more conducive to enlisting Cuban cooperation to end that conflict.

Repairing the Damage: The First Nine Months

Early in the administration, the President should act decisively to repair the damage done to U.S.-Cuban relations by President Trump and launch a new policy of engagement. All of the steps in this first stage of the policy can be undertaken by executive authority. They fall into three broad categories:

1. Re-open the diplomatic channels Trump cut-off.
2. Remove the restrictions Trump imposed on family ties and people-to-people contacts.
3. Remove the restrictions Trump imposed on commercial engagement.

³² Antía Castedo, "Crisis en Venezuela: cómo Noruega se convirtió en un país clave en la resolución de conflictos," BBC News Mundo, May 28, 2019, <https://www.bbc.com/mundo/noticias-america-latina-48388560>.

Re-engage Diplomatically

Diplomatic engagement was among the most successful aspects of the Obama administration's opening to Cuba. President Trump shut it down almost entirely. Diplomatic re-engagement is a first necessary step in repairing the damage and the United States should take the initiative to re-start it.

- Place a personal call or send a message from the President to President Díaz-Canel expressing the U.S. interest in rebuilding a constructive relationship and inviting Cuba to attend the Ninth Summit of the Americas to be held in the United States in 2021.
- Give a speech by the President or Secretary of State announcing the new policy of engagement and have the President sign a new Presidential Policy Directive establishing the core principles of the policy of engagement and directing executive branch agencies to pursue relations of mutual interest with their Cuban counterparts.
- Send a senior U.S. diplomat with experience in Cuba to Havana as U.S. Chargé de Affaires and nominate that person as ambassador.
- Begin re-staffing the U.S. Embassy in Havana and allow Cuba to re-staff its embassy in Washington.
- Gradually restore the Embassy's consular section to full service, reinstate the Cuban Family Reunification Parole Program and the five-year multiple entry B2 visa frequently used for family visits, and begin meeting our obligation under the 1994 migration agreement to process a minimum of 20,000 immigrant visas annually, if possible during the COVID-19 pandemic.
- End the prohibition on U.S. government personnel traveling to Cuba on official business.
- Propose to Cuba reconvening the U.S.-Cuba Bilateral Commission and the associated working groups to resume the dozen and a half bilateral dialogues that were underway in 2016 and that President Trump terminated, beginning with the migration dialogue required by the 1994 migration agreement.
- Stop the diplomatic campaign to pressure other countries to reject health care cooperation with Cuba and re-evaluate the Trump administration's Tier 3 designation of Cuba in the Trafficking in Persons (TIP) report.
- Review the Trump administration's designation of Cuba as "non-cooperating" in the fight against international terrorism.
- Open a dialogue with Cuba on finding a political settlement to the crisis in Venezuela.

Lift Sanctions on Family Ties, Cultural and Educational Exchange, and Commercial Engagement

The sanctions the Trump administration imposed have had the greatest impact on family ties and cultural and educational exchange, especially people-to-people travel. These sanctions and others aimed at restricting commercial relations have also harmed U.S. businesses. Although we list below each of the sanctions that Trump imposed, the simplest approach, both politically and administratively, is to reverse most of them at once in a single action:

- Restore the Cuban Assets Control Regulations (CACR) and the Export Administration Regulations (EAR) regarding Cuba to their status on January 20, 2017.

Family Ties

The President should reverse the previous administration's sanctions that make it more difficult for Cuban Americans to maintain ties with family in Cuba, both for humanitarian and practical reasons. The humanitarian case is self-evident. In practical terms, Cuban Americans are outstanding ambassadors of American values. Reconciliation between Cuban Americans and Cubans will provide a firm political foundation for the normalization of relations between the two governments.

Restoring the CACR and EAR to January 20, 2017 would:

- Remove the dollars limits on cash remittances and gift parcels and end restrictions on "donative" (non-family) remittances.
- Restore a narrow, sensible definition of Cuban government and Communist Party officials prohibited from receiving them.
- Restore the general license for U.S. remittance providers to do business with the Cuban remittance processors FINCIMEX and American International Services.

In addition to amending the CACR and EAR, other actions are needed to rescind Trump's restrictions on family ties:

- Restore the five-year multiple entry B2 visa for eligible applicants, most of whom are Cubans visiting family in the United States.
- Resume the U.S. Refugees Admission Program in Cuba and the Cuban Family Reunification Parole (CFRP) Program.
- Re-issue licenses to U.S. airlines to service all Cuban cities with regular commercial or charter flights.

Cultural and Educational Exchange

Cultural and educational exchange, and related policies, should be restored because President Trump's prohibitions infringe on the Constitutional right to travel, hurt the U.S. travel industry, undermine the emergent Cuban private sector, and deprive both U.S. visitors and Cubans of the benefits of personal interaction. Cultivating interpersonal relationships through travel and educational and cultural exchange helps the U.S. and Cuban people better understand one another's values, fears, and aspirations, thereby building a foundation for cooperation and reconciliation. Academic, scientific, and cultural exchange is an essential part of a normal relationship and benefits both countries. The President's policy should be to encourage such exchanges. It is especially important for Cuban scholars and students to be exposed to the principles of academic freedom and open scholarly debate through exchanges with their U.S. counterparts.

Restoring the CACR and EAR to January 20, 2017 would:

- Restore the general license for group and individual people-to-people educational travel.
- Abolish the "Cuba Prohibited Accommodations List" limiting where travelers can stay.
- Restore the licenses for U.S.-based cruise lines, private vessels, commercial airlines, and charter airlines to carry passengers to Cuba.
- Remove the limitations on academic exchanges.
- Restore the general license to make donations to certain Cuban entities that are part of the government, such as schools, hospitals, museums, scientific institutions, etc.

In addition to amending the CACR and EAR, other actions are needed to rescind Trump's restrictions cultural and educational exchange:

- End the prohibition on U.S. government funding for cultural or educational exchanges involving Cuban government entities or employees (subsequent to a TIP review).
- Halt the denial on policy grounds of non-immigrant visas to Cuban scholars and artists.
- Re-issue a license for Major League Baseball to implement its agreement with the Cuban Baseball Federation so that Cuban players can play in the United States without having to establish residency outside Cuba.

Commercial Engagement

Promoting U.S. commercial relations is an essential component of a policy of engagement aimed at supporting a more diversified Cuban economy. A necessary condition for expanding commercial relations is removing restrictions, and then reassuring U.S. businesses that their proposed contracts are legal and that the required financial arrangements are possible. Also, to the extent that U.S. financial sanctions exclude Cuba from dollar-denominated trade with U.S. friends and allies, Cuba has an incentive to turn to U.S. competitors like Russia and China who are willing to negotiate trade agreements on barter terms. The restricted list should be abolished because U.S. visitors should not have to consult a State Department list before deciding which Cuban hotel to stay at or which souvenir shop to patronize. The existence of the list creates confusion among U.S. visitors about what is legal and what is not, making them reluctant to travel.

Restoring the CACR and EAR to January 20, 2017 would:

- Restore the general license for U.S. financial institutions to process so-called “U-turn” transactions between Cuban and non-U.S. persons.
- Eliminate the Department of State’s “Restricted Entities” list of Cuban companies with which U.S. persons are prohibited from doing business.
- Restore to 25% the “de minimis” amount U.S. content allowed in goods exported to Cuba from a third country.
- Restore the broad definition of telecommunications equipment that can be sold to Cuba.
- Allow re-issuing licenses for U.S. companies to lease planes and ships to Cuba.
- Allow re-issuing a license to Marriott Hotels to manage hotels in Cuba.

In addition to amending the CACR and EAR, other actions are needed to rescind Trump’s restrictions on commercial engagement:

- Re-suspend Title III of the Cuban Liberty and Democratic Solidarity Act of 2016.
- Reassure U.S. businesses that a wide variety of financial and commercial transactions with Cuba are legal.

Sequencing

The new administration should aim to complete all of the steps above prior to the Summit of the Americas. After briefing selected members of Congress and the Cuban American community, the first step is to lay the foundation of a new policy of engagement with the call to President Díaz-Canel, a new PPD, a public statement of the new policy, and the nomination of an ambassador.

Next, the Department of State should begin discussions with Cuba about re-staffing the embassies, reconvening the U.S.-Cuba Bilateral Commission and associated working groups, and exploring a political settlement to the crisis in Venezuela. Simultaneously, the administration should direct OFAC and BIS to begin preparing amendments to the CACR and EAR to reverse Trump’s

sanctions, especially those restricting family ties, travel, and educational and cultural exchange, as promised during the campaign.

The administration should also begin a review of Cuba's status as a TIER 3 country under the Trafficking in Persons Act, its designation as non-cooperative in the fight against international terrorism, and the Section 7031(c) designations of several Cuban officials. These politically-motivated designations by the Trump administration were intentional irritants aimed at poisoning the atmosphere for re-engagement and thereby making hostility irreversible. None of them advance U.S. interests.

As the Summit approaches, the administration should aim to complete the re-staffing of the embassy and announce, in a single package, the reversal of Trump's restrictions on family ties, travel, people-to-people engagement, and commerce, as enumerated above.

Taking the Initiative: The Second Year

Once U.S.-Cuban relations have been placed on a more constructive footing, the President should take new steps, beyond what the Obama administration was able to accomplish, in order to keep the process of normalizing relations moving forward. Naturally, the timing of these steps will depend on how successful the policy has been in the first twelve months. Has the U.S. Embassy been operating safely? How responsive has Cuba been to cooperation on issues of mutual interest and to finding solutions to issues in dispute? Has there been progress in finding a solution in Venezuela? Has there been progress on human rights?

Initiate a New Human Rights Dialogue

Defending human rights has long been an important interest of U.S. foreign policy, especially for Democratic presidents. A new policy of engagement should emphasize human rights issues while recognizing that progress is likely to be slow and uneven. Cuba will not respond to direct U.S. demands, but its human rights practices have historically improved when tensions with the United States have waned.

- Resume the Human Rights Dialogue, emphasizing that this is a priority for the President.
- Seek the full release of certain prisoners as a gesture of good will from the Cuban side.
- Raise the issue of the Cuban government's practice of blocking international travel by independent journalists, commentators, and bloggers.
- Raise the issue of abuses reported by some Cuban medical personnel working abroad.
- Work with the European Union to develop a more coordinated approach to dialogue with Cuba around human rights issues.
- Seek an end to discriminatory practices against Cuban Americans visiting the island.

Expand Security and Law Enforcement Cooperation

Transnational criminal networks, violence, terrorism, and illicit drug trafficking are among the biggest threats to the security of all the Caribbean Basin nations, including the United States and Cuba. Without Cuban cooperation, the southern maritime border of the United States would be far less secure. Cooperation on drug interdiction, migration, and search-and-rescue of people in distress at sea has proven highly successful, and therefore ought to be expanded. The Law Enforcement Dialogue and associated working groups should be resumed in order to build cooperation on additional issues, in line with the 2017 MOU between Cuba and the United States.

- Resume the Law Enforcement Dialogue and associated working groups on counter-narcotics, cybercrime, trafficking in wildlife, money laundering, forgery of travel and identity documents, human trafficking, secure travel and trade, and fugitives.
- Increase information sharing on counter-narcotics and criminal fugitives.
- Resume the Migration Dialogue and undertake a review of U.S. migration policy regarding Cuba and increase cooperation against human smuggling.
- Invite Cuba to observe or participate in multilateral security forums such as the Council of Defense Ministers of the Americas, the Caribbean Basin Security Cooperation Dialogue, Caribbean Nations Security Conference.
- Invite Cuba to participate in preparedness exercises for disaster response and counter-narcotics operations.

Health and Environmental Cooperation

Environmental protection is an urgent issue on which U.S. and Cuban interests coincide. Cuba's serious commitment to action on climate change and its good relations with other Caribbean islands make it an ideal partner in U.S. efforts to help the region prepare. Health cooperation would also bring considerable and wide reaching health benefits to the peoples of both countries and beyond.

- Prioritize environmental protection as a central pillar of bilateral cooperation by: initiating a climate-focused dialogue to identify priority areas for cooperation and collaboration; implementing existing bilateral agreements on environmental protection; and including Cuba in the President's Clean Energy Export and Climate Investment Initiative.
- Open a dialogue with Cuba on health cooperation, with a special focus on pandemic preparedness and response, building on the lessons of past cooperation in response to the Ebola outbreak in Africa and responses to natural disasters in other countries.
- Expand cooperation in agricultural health research to combat plant and animal diseases, laying the foundation for increased bilateral trade.
- Include Cuba in any bilateral or multilateral U.S. assistance programs in response to the COVID-19 pandemic and other humanitarian crises.

Educational and Cultural Exchanges

Educational and cultural exchanges establish civil society connections and foster deeper understanding and trust. They establish linkages that build a foundation of mutual understanding and respect essential for a sustainable policy of engagement and reconciliation. U.S. educational and cultural institutions are aware of the importance of these exchanges and have pursued them even in the face of hostility between the two governments. If the U.S. government would establish the regulatory environment to allow for, and then proactively encourage such exchanges, they will flourish. Moreover, if the State Department's Bureau of Educational and Cultural affairs offered to open some of its programs to Cuban participation, it would send a strong signal of encouragement to U.S. nongovernmental organizations.

- Initiate discussions with Cuba about participating in U.S. government sponsored educational and cultural activities, scholarships, and fellowships.
- Encourage U.S. educational and cultural institutions to reach out to their Cuban counterparts to foster nongovernment partnerships and exchanges.
- Assign an experienced and activist educational and cultural affairs officer to the Office of the Coordinator for Cuban Affairs in Washington.
- Allow U.S. persons to commission the creation of artistic and informational works by Cuban artists, musicians, and writers.
- Provide up to three year multiple entry O and P1, P2, and P3 visas for Cuba artists, entertainers, scientists, and athletes engaged in educational, cultural, and scientific exchanges.
- Encourage and facilitate private engagement in Cuba's historic preservation initiatives, and collaborate with the EU's historic preservation work in Cuba.
- Re-purpose democracy promotion funds to promote authentic people-to-people interaction via scholarships, cultural exchanges, transparently and in consultation with the Cuban government.
- Reform TV and Radio Marti, return their offices to Washington, DC, and merge their operations into the broader VOA offerings in order to end, once and for all, the series of abuses that have plagued the Office of Cuban Broadcasting.

Economic Engagement

Promoting commercial engagement is an important element of a U.S. policy of engagement because it will help to foster economic reform. An enabling regulatory environment will also help U.S. businesses to compete more effectively in the Cuban market. Strengthening the Cuban non-state sector will contribute to its growth as a dynamic contributor to economic reforms and civil society, providing alternative employment opportunities to Cubans, and raising the standard of living of the general public. A proactive effort to educate U.S. businesses about commerce with Cuba and to clarify aspects of the regulatory environment will reduce perceptions of risk, removing an important obstacle to commercial engagement.

- Within the limits of current law, encourage International Financial Institutions (IFIs) to engage in technical discussions with Cuba and assist in Cuba's process of economic reform.
- Expand support for the non-state sector of the Cuban economy by facilitating trade relations, financing, and support from U.S. businesses, universities, and foundations.
- Promote increased U.S. commercial engagement with Cuba by proactively providing guidance to U.S. businesses about U.S. and Cuban laws and regulations and providing mechanisms to reassure U.S. businesses wary of U.S. sanctions.
- Increase benefits to the Cuban people by adopting regulations and licensing policies that enable U.S. companies, charities, and other organizations to carry out activities that benefit the general Cuban population, including joint ventures and other forms of partnership with Cuban state or private enterprises.
- Expand agricultural trade and investment and build upon the MOUs on agricultural cooperation and animal and plant health signed with Cuba in 2016 and 2017.
- Pursue U.S. property claims by resuming the Claims Dialogue with Cuba and by issuing a general license for U.S. claimants, certified and uncertified, to settle their property claims directly with the Cuban government if they so choose and allow them to repatriate any resulting payments or enter into debt-equity swap agreements.

Finishing the Job: A Legislative Agenda

One lesson from the Obama years is that a policy based exclusively on executive action is not enduring. As we have witnessed, a new administration can quickly dismantle it. If we hope to persuade the Cuban government that a constructive relationship with the United States is possible and will flourish to the extent that Cuba moves toward a more open political and economic system, Cuban authorities must be convinced that U.S. policy is durable. That will require legislative action to remove some of the constraints on engagement that Congress has enacted over the years, first and foremost the embargo. Ending the embargo is Cuba's highest priority in its relationship with the United States; so long as the embargo remains in place, progress toward a more normal relationship will be limited.

Regardless of which party ultimately holds the majority in the U.S. Senate, the administration should publicly express support for legislation to end the embargo, and work with the bipartisan Cuba Working Group in the House and champions for engagement in the Senate to cultivate congressional leadership on engagement.

First Steps

Two actions that could gain some Republican support are repeal of the Cuba-related sections in the Trade Sanctions Reform and Export Enhancement Act of 2000 (TSRA) that limit travel and agricultural sales.

- Repeal the prohibition on travel to Cuba that is not expressly licensed in the CACR.
- Repeal the limits on the use of credits for financing U.S. agricultural sales to Cuba.

Several additional measures would facilitate commercial ties:

- Repeal Section 211, a special interest provision of U.S. law that invalidates certain Cuban trademarks in the United States and threatens reciprocal protection for U.S. brands.
- Approve an amendment that, notwithstanding any other provision of law, authorizes the United States to provide Cuba with foreign assistance for the purpose of developing sustainable energy sources and implementing its 100 year plan to mitigate and adapt to climate change.

Ending the Embargo

The embargo is a central obstacle to the normalization of relations with Cuba, as President Obama recognized when he called on Congress to repeal it. For Congress to repeal the embargo it would have to amend a number of different statutes in addition to the TSRA.³³ The most important:

- Repeal the Cuban Democracy Act of 1992, or at least the sections that limit the freedom of U.S. subsidiaries in third countries to do business with Cuba, and that prevent vessels engaged in commerce with Cuba from entering U.S. ports for 180 days.
- Repeal the Cuban Liberty and Democratic Solidarity Act of 1996, or at least the sections that inscribe the embargo into law, prohibit U.S. support for Cuban participation in IFIs, and impose extraterritorial sanctions on other countries (Titles III and IV).
- Repeal the section of the Foreign Assistance Act of 1961 that authorizes the president to unilaterally impose a trade embargo on Cuba.

Once the embargo is no longer mandated by law, the President can lift it simply by not renewing the emergency authorities under the Trading with The Enemy Act. If economic sanctions against Cuba are called for in the future, they can be imposed under the International Emergency Economic Powers Act (IEEPA).

Some legal scholars argue that the President has the authority to end the embargo by executive order. Because the embargo regulations codified by the LIBERTAD Act include the President's licensing authority without any limitation, there is a legal argument that the licensing power extends to ending the embargo entirely.³⁴ The principal rationale for such a step would be President Clinton's contention, in his signing statement, that certain passages of the law, including codification, constitute unconstitutional infringements on the President's authority to conduct foreign policy.³⁵

³³ For an effort to compile a complete list of the amendments required, H.R. 403 (Mr. Rangel) 114th Congress 1st Session, January 16, 2015.

³⁴ Robert L. Muse, "The President Has the Constitutional Power to Unilaterally Terminate the Embargo on Cuba," *Global Americans*, October 8, 2020, <https://theglobalamericans.org/2020/10/the-president-has-the-constitutional-power-to-unilaterally-terminate-the-embargo-on-cuba/>. For concurring opinions, see Kevin J. Fandl, "Adios Embargo: The Case for Executive Termination of the U.S. Embargo on Cuba," 54 *Am. Bus. L.J.* 293; and Peter Jeydel, "How Much of the Cuba Embargo Could the President Unilaterally Lift?" *Steptoe International Compliance Blog*, October 21, 2016, <https://www.steptoecomplianceblog.com/2016/10/how-much-of-the-cuba-embargo-could-the-president-unilaterally-lift/>.

³⁵ William J. Clinton, "Statement on Signing the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996," March 12, 1996. The American Presidency Project, <https://www.presidency.ucsb.edu/node/222515>. For a discussion of the constitutionality of the LIBERTAD Act, see Joaquin Roy, "Lawyers Meet the Law: Critical U.S. Voices of Helms-Burton," *Yearbook of International Law*, 6, 39 (1997/1998).

Appendix: Bilateral Agreements

Bilateral instruments adopted by the United States and Cuba governments between December 17, 2014 and January 20, 2017.

- 1) **Agreement between the United States and Cuba for the restoration of diplomatic relations.** Reestablished full diplomatic relations (July 1, 2015).
- 2) **Memorandum of Understanding on cooperation for the conservation and management of Marine Protected Areas.**³⁶ Established a cooperative relationship between the National Oceanic and Atmospheric Administration (NOAA) and the National Park Service (NPS) and Cuba's National Center of Protected Areas (CNAP) to facilitate joint efforts concerning the science, stewardship, and management of marine protected areas (November 18, 2015).
- 3) **Joint Declaration for cooperation in the field of environmental protection.**³⁷ Declared the intention to a) facilitate the exchange of information; b) strengthen cooperative activities involving governmental agencies; c) facilitate the movement of officials, equipment, and materials; d) strengthen collaboration in and through sub-regional, regional, and global organizations; and e) facilitate initiatives undertaken by non-governmental organizations, scientific groups, and academic institutions (November 24, 2015).
- 4) **Bilateral collaboration program in English language teaching.** Agreement to send U.S. English-language specialists to work with the Cuban Ministry of Education and the Ministry of Higher Education to support English teacher training. In addition, the U.S. offered a selection of online English courses for Cuban teachers (January 15, 2016).
- 5) **Memorandum of Understanding for the establishment of regular flights.**³⁸ Authorized commercial and charter services between any point or points in the United States and in Cuba by airlines of either country, holding all necessary authorizations and licenses (February 16, 2016).
- 6) **Pilot plan for direct mail transportation between the United States and Cuba.** Re-established direct postal service between through the implementation of a Pilot Plan for the transportation of mail, with the intention of institutionalizing it on a permanent basis. (March 11, 2016).
- 7) **Memorandum of Understanding on cooperation in areas of hydrography and geodesy and services related to mutual interest.** Instituted bilateral cooperation in the areas of hydrography, oceanography, geodesy and related services to improve maritime navigation safety. The MOU was signed between the National Ocean Service, the National Oceanic and Atmospheric Administration, the Department of Commerce of the United States and the National Office of Hydrography and Geodesy of Cuba (March 18, 2016).

³⁶ <https://nmssanctuaries.blob.core.windows.net/sanctuaries-prod/media/archive/about/us-cuba-mou-english.pdf>

³⁷ <https://www.edf.org/sites/default/files/us-cuba-joint-statement-on-environmental-cooperation.pdf>

³⁸ <https://2009-2017.state.gov/e/eb/rls/othr/ata/c/cu/252525.htm>

- 8) **Memorandum of Understanding between the Ministry of Agriculture of Cuba and the Department of Agriculture of the United States for cooperation in agriculture and other related fields.**³⁹ Established bilateral cooperation in the agricultural and forestry sectors, including agro-food, animal and plant sanitation, and science-based standards for agricultural trade. Some of the priority areas defined in the MOU include cooperation on sanitary and phytosanitary issues, research and scientific methods for addressing plant and animal sanitation issues, organic production, climate-smart agriculture research and practices related to biotechnology, and agriculture irrigation (March 21, 2016).
- 9) **Memorandum of Understanding between the Ministry of Interior and the Department of Homeland Security for cooperation in the field of passenger and trade security.** Sets the basis for cooperation related to passenger and trade security including a) exchanging risk information for travelers, cargo or conveyances in international transit; b) the continuation of periodic, mutual, and reciprocal assessments regarding air, sea, and port security; and c) the coordination of transportation security, screening of cargo, travelers and baggage, and the design of secure, efficient inspection facilities at ports and airports, among other things (May 5, 2016).
- 10) **Memorandum of Understanding between the Department of Health and Human Services and the Ministry of Public Health.**⁴⁰ Established a strategy for cooperation in the field of health, through the implementation of scientific, academic, technical, and research projects and exchanges, the exchange of technical information, and other activities. Some priorities defined in the MOU include communicable and non-communicable diseases, public health management, patient safety systems in hospitals and outpatient settings, and exchange of health professionals, among others (June 13, 2016).
- 11) **Arrangement for operational cooperation with the objective of confronting the illicit traffic in narcotic drugs and psychotropic substances.** Advanced cooperation and information sharing between Cuba and the United States in their common effort against illegal narcotics trafficking (July 21, 2016).
- 12) **Arrangement and Operational Procedures between the Transportation Security Administration and the Institute of Civil Aeronautics on the deployment of Security Officers on Board in aircraft covering flights between both countries.** Established the legal framework for the deployment of U.S. in-flight security officers (air marshals) on board certain flights to and from Cuba. (July 5, 2016 and amended on September 26, 2016).
- 13) **Memorandum of Understanding in the area of cancer between the Department of Health and Human Services and the Ministry of Public Health.** Established bilateral cooperation on joint research projects, meetings, and workshops related to cancer control with the aim of promoting exchange of information and best practices on cancer research. (October 20, 2016).

³⁹ https://www.fas.usda.gov/sites/default/files/2016-06/u.s.-cuba_agricultural_mou_signed.pdf

⁴⁰ <http://medicc.org/ns/documents/memorandumofunderstanding.pdf>

- 14) **Memorandum of Understanding on cooperation and exchange in the area of wildlife conservation and national terrestrial protected areas between the Department of the Interior and the Ministry of Science, Technology and Environment.** Establishes the basis for cooperation between the systems of protected areas of both countries, bearing in mind the connection with other ecosystems of the Caribbean region and the Gulf of Mexico. In addition, it recognized the need to establish effective working relations between agencies to conduct joint scientific research, shared management of natural resources, and cooperation on environmental education (December 20, 2016).
- 15) **Memorandum of Understanding between the Department of the Interior, through of the Geological Survey and the Ministry of Science, Technology and Environment, through the National Center for Seismological Research for cooperation in the exchange of information on seismic records and related geological information.** Established cooperation on the exchange of information on seismic registers and related geological information, especially related to seismic events in the Caribbean and Gulf of Mexico (December 12, 2016).
- 16) **Memorandum of Understanding between the National Oceanic and Atmospheric Administration and the Institute of Meteorology of the Ministry of Science Technology and Environment on cooperation for the exchange of information and research in meteorology and climate.** Encouraged joint research on issues related to meteorology, climate change, oceanography and atmospheric contamination over the forecast areas, the models for atmospheric and climate conditions, the expansion and integration of meteorological observation and vigilance networks, and hurricane analyses and forecasts (December 21, 2016).
- 17) **Cooperation Agreement on the preparation and response to pollution caused by spills of hydrocarbons and other harmful and potentially dangerous substances in the Gulf of Mexico and The Florida Straits.**⁴¹ Established coordination regarding marine or coastal environmental pollution caused by spills of hydrocarbons and other noxious and potentially hazardous substances that may impact the marine area. Its objective was to develop and implement measures to ensure a suitable response in each case that may significantly impact the area of U.S and/or Cuba (January 9, 2017).
- 18) **Joint Declaration of the United States and Cuba on immigration policy.**⁴² Reaffirmed both governments' commitment to a) facilitate regular migration to the benefit of both countries, b) discourage irregular migration, and c) end the special parole policy for Cuban nationals who reach the territory of the United States (commonly referred to as the wet foot-dry foot policy), as well as the parole program for Cuban health care professionals in third countries. In addition, it stated U.S. and Cuba's intention to promote changes in their respective migration laws to enable fully normalized migration relations between the two countries (January 12, 2017).

⁴¹ <http://www.wola.org/wp-content/uploads/2020/08/Environment-and-Conservation-Cooperation-Agreement-January-9-2017.pdf>

⁴² <https://permanent.access.gpo.gov/gpo78151/268447.pdf>

- 19) **Memorandum of Understanding for cooperation in Law Enforcement and Compliance.**⁴³ Established the areas, bases, and ways to promote collaboration between the law enforcement agencies of the United States and Cuba, including technical exchanges on specific law enforcement issues such as counter-narcotics, money laundering, fraud, human smuggling, and counterterrorism (January 16, 2017).
- 20) **Agreement on aeronautical and maritime search and rescue.**⁴⁴ Established a framework to strengthen cooperation in the field of maritime and aeronautical maritime search and rescue in order to enhance effectiveness and efficiency in assisting persons in distress and to act in accordance to obligations under international law (January 18, 2017).
- 21) **Treaty on the Delimitation of the Continental Shelf in the Eastern Polygon of the Gulf of Mexico beyond 200 nautical miles.** Delineates the U.S.-Cuba maritime boundary in the eastern Gulf of Mexico, the only part of the U.S.-Cuba maritime boundary that had not previously been agreed, providing legal certainty to the parties for the exercise of their rights of jurisdiction and sovereignty over that maritime area (January 18, 2017).
- 22) **Agreement between the Everglades National Park, National Park Service, Department of the Interior and the Ciénaga de Zapata National Park, National System of Protected Areas, Ministry of Science, Technology and Environment.** Established bilateral cooperation in environmental management of these protected areas, including the exchange of information, modern practices for the sustainable management of the resources, and scientific knowledge. The accord was accepted under the Memorandum of Understanding on the Conservation of Wildlife and National Protected Land Areas (January 18, 2017).
- 23) **Memorandum of Understanding for cooperation between the Animal Health and Plant Health Department of the Ministry of Agriculture of Cuba and the Animal and Plant Health Inspection Service of the United States Department of Agriculture from America.**⁴⁵ Intended to contribute to preventing the introduction and spread of quarantine pests, animal and plant disease agents and vectors in the United States and Cuba through the exchange of scientific information, best practices for the prevention and control of plagues and emerging diseases, collaborative scientific projects, and the holding of events on specific aspects of animal and plant health. The MOU complements the provisions of the MOU on the cooperation in the field of agriculture and other related areas (January 19, 2017).

⁴³ <https://cu.usembassy.gov/united-states-cuba-sign-law-enforcement-memorandum-understanding/>

⁴⁴ <https://www.state.gov/wp-content/uploads/2019/02/17-605-Cuba-Maritime-Search-and-Rescue.pdf>

⁴⁵ https://www.fas.usda.gov/sites/default/files/2017-02/signed_animal_plant_health_mou_english_spanish_01_2017.pdf.