

CUBA STUDY GROUP 

# U.S.-CUBAN RELATIONS IN THE TRUMP ERA:

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**Confronting Rollback,  
Salvaging Engagement,  
Laying the Groundwork  
for a Better Future**

## EXECUTIVE SUMMARY

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**O**n June 16, 2017, President Donald Trump announced a partial rollback of his predecessor’s engagement policy with Cuba. U.S. travelers will find it more difficult to visit the island. Once there, opportunities for exploring commercial opportunities will be more restricted.

Beyond the impact on U.S. citizens, Cuban entrepreneurs and citizens will be hurt by renewed travel restrictions—much more so than the Cuban government. While the Trump administration framed new prohibitions on individual people-to-people travel and commercial interactions with the Cuban military as a means to support the Cuban people and private sector, these measures will have the opposite effect of their stated intent.

Nevertheless, the fact that significant elements of the prior policy remain in place offers an opportunity to salvage some benefits of engagement. As the Executive Branch prepares to issue regulations implementing the President’s National Security Memorandum on Cuba, this paper assesses the projected impact of the Trump administration’s policy and makes recommendations about how to productively tailor its impact.

These include:

- Continue core bilateral agreements pertaining to national security cooperation.
- Appoint a career diplomatic professional as Ambassador to Cuba.
- Continue welcoming Cuban visitors to the United States for people-to-people exchanges.
- Define the ban on “engagement with the Cuban military” in transparent, clearly delimited terms to avoid regulatory ambiguity and needlessly petty effects.
- Exclude common citizens from the newly expanded list of “prohibited officials of the Cuban government” barred from receiving remittances.
- Honor and do not create obstacles for existing U.S.-Cuba commercial agreements.

- Propose to Canada and Cuba the creation of a joint investigation into recently revealed incidents regarding U.S. and Canadian diplomats on Cuban soil.
- Do not dedicate excess resources to Cuba sanctions enforcement.
- Explore options to assist the Cuban people in the wake of Hurricane Irma.

The Cuba Study Group believes that U.S. interests and the just aspirations of all Cubans for a more democratic, prosperous future are best served by a normalization policy of increased economic openness and creative diplomacy. In the absence of such a commitment, we call on the Trump administration to carefully write its forthcoming Cuba policy regulations in a way that minimizes unnecessary regulatory burdens and does not hurt average Cubans.

## INTRODUCTION

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**O**n June 16, 2017, President Donald Trump announced a partial rollback of the policy of engagement with Cuba forged by his predecessor. Key features of the Obama administration’s diplomatic rapprochement with the island remain in place, but President Trump outlined plans to curtail significant aspects of the previous approach. U.S. travelers will find it more difficult to visit the island. Once there, opportunities for exploring commercial opportunities will be more restricted. Beyond the impact on U.S. citizens, Cuban entrepreneurs and citizens will be hurt by renewed travel restrictions—much more so than the Cuban government.

Consistent with its longstanding position, the Cuba Study Group opposes the announced direction of the Trump Administration’s new Cuba policy. As Cuban-Americans with a non-partisan interest in U.S.-Cuban affairs, we remain confident that expanded engagement with the island—including via the reduction of travel and commercial barriers—is the best strategy for boosting U.S. jobs and exports and supporting the Cuban people. Change inside Cuba on many metrics remains slow. But further progress toward normalization stands the greatest chance of improving U.S. security, minimizing irregular migration, enhancing the management of U.S. borders, and encouraging continued, positive evolution inside the island. A return to diplomatic hostility and partial strategies of economic isolation, as President Trump’s policy now portends, will only harm U.S. interests and the Cuban people.

Nevertheless, the fact that significant elements of the prior policy remain in place offers an opportunity to salvage some benefits of engagement. The Cuban government, in turn, should not be granted further opportunities to use renewed bilateral tension as an excuse to block needed reform. Thus, in addition to analyzing recent history and examining the projected impact of the Trump administration’s approach, this paper makes recommendations to U.S. officials about how to productively tailor the impact of the president’s new Cuba policy. In light of the delicate political transition that Cuba will undergo when Raúl Castro steps down in 2018, the United States must ensure that the next four years represent a temporary setback, not a permanent blow, to the considerable bilateral progress that was previously achieved.

## HOW WE GOT HERE: D-17 AND THE OBAMA ADMINISTRATION'S DETENTE

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For more than half a century, the United States' strategy of isolating Cuba failed to achieve its ends. Economic sanctions initially responded to the Cuban government's nationalization of U.S.-owned properties in the 1960s. Nearly sixty years later, those property claims remain unresolved. For decades, the U.S. trade embargo also aimed to provoke the Cuban government's collapse and transition it away from socialist rule. Yet, after the Soviet Union dramatically increased economic subsidies and countries in the Western Hemisphere restored their own relationships with the island, sanctions worsened the lives of Cubans without unleashing sustained, anti-systemic political change. Even after the Soviet Union fell and Cuba entered a prolonged economic crisis, a policy of isolation did not provide useful leverage. Instead, it hamstrung U.S. presidential administrations from pursuing smart, strategic initiatives that might benefit the Cuban people in response to evolving conditions in Cuba.<sup>1</sup>

These considerations motivated a fundamental shift in U.S. policy under the Barack Obama administration. President Obama adopted small-scale changes to travel regulations beginning in 2009. But the real breakthrough came on December 17, 2014. Rather than isolate Havana, Washington moved to normalize diplomatic ties. Further, the United States renounced the explicit objective of promoting regime change, while reaffirming its commitment to advocating for and speaking in defense of universal values in Cuba, as it does around the globe. Finally, the Executive Branch shifted to a policy of facilitating greater U.S. contact with the Cuban people and Cuban civil society. While the bulk of the embargo remained codified by law, changes implemented under executive authority after 2014 made it easier for U.S. citizens to send money to and visit the island under previously established categories of licensed travel; authorized limited U.S. exports to and investments in the Cuban telecommunications, agriculture, construction, and infrastructure sectors, where the Cuban people stood to benefit; and facilitated limited access to the U.S. market for Cuba's incipient private sector.<sup>2</sup>

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1 See: Cuba Study Group, "Restoring Executive Authority Over U.S. Policy Toward Cuba," February 2013.

2 See Treasury Department Fact Sheets available at: <https://www.treasury.gov/resource-center/sanctions/Programs/Pages/cuba.aspx>. For an analysis of the President's Executive Authority to implement such changes, see: Stephen F. Propst, "Presidential Authority to Modify Economic Sanctions Against Cuba," Hogan Lovells US LLP, February 2011.

In 2015, both Cuba and the United States upgraded their Interest Sections to full embassies. The United States and Cuba also established a Bilateral Commission that initiated more than a dozen interrelated dialogues on issues such as law enforcement, migration, property claims, human rights, and counter-narcotics cooperation. As a result, the United States and Cuba signed bilateral agreements and memoranda of understanding in 22 areas.<sup>3</sup> Among the most salient were the restoration of direct postal ties (December 2015) and commercial air service (February 2016), an agreement on agricultural collaboration (March 2016), and agreements on health, law enforcement, oil spill mitigation, and migration (December 2016).

## **GAINS FROM ENGAGEMENT**

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The gains from the Obama administration's Cuba policy between 2014 and 2017 were both immediate and clear.

### **People-To-People Contact**

In the first year of the revised U.S. policy, the number of U.S. travelers to Cuba grew by 75%.<sup>4</sup> By early 2017, the pace of growth had only increased, with 284,000 Americans (not including Cuban-Americans) visiting between just January and May—more than during all of 2016.<sup>5</sup> Along with the U.S. government's public diplomacy efforts—e.g. sending high-profile cultural and artistic ambassadors to the island—such contacts substantially undercut the perception of the United States as the Cuban people's enemy.<sup>6</sup>

### **Bolstering Cuba's Burgeoning Entrepreneurial Sector**

Following a series of 2010 Cuban government reforms, Cuba's entrepreneurial sector emerged as a significant factor in debates inside Cuba about economic and political reforms. The private sector

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3 <http://www.reuters.com/article/us-cuba-usa-deals-idUSKBN1522C7>; <http://www.cubadebate.cu/especiales/2017/01/29/hitos-de-las-relaciones-cuba-estados-unidos-en-el-2016/#.WJpLERS9jzI>

4 <https://obamawhitehouse.archives.gov/the-press-office/2016/10/14/presidential-policy-directive-united-states-cuba-normalization>.

5 <http://www.elnuevoherald.com/noticias/mundo/america-latina/cuba-es/article156007364.html>

6 For example: <http://www.nba.com/2016/news/06/26/shaq-cuba-basketball-diplomacy.ap/>

grew to account for 30% of the country's workforce. U.S. travelers to Cuba became the principal source of revenue for many small businesses. By freeing Cuban-Americans, and later, all U.S. citizens to remit funds, the United States also became the source for much of the sector's start-up and growth capital.<sup>7</sup> Cuban entrepreneurs, technology developers, and private cooperative leaders likewise benefitted from educational opportunities in the United States.<sup>8</sup>

## **U.S. Business and Job Opportunities**

With the Obama administration's support, a number of U.S. companies entered the Cuban market. Airbnb forged a successful presence, partnering with Cubans who rent spare rooms in their homes to foreign guests. American, Delta, Jetblue, Southwest, and other airlines invested considerable resources in establishing commercial air links. U.S. mobile service providers signed roaming agreements with Cuba's state-owned telecommunications company. Carnival, Royal Caribbean, and Norwegian Cruise Lines initiated service to Cuban ports of call. All told, these commercial links netted the United States economy \$6.6 billion and directly and indirectly supported 12,000 U.S. jobs.<sup>9</sup> At the end of the Obama presidency, additional deals—with major companies like GE, and on projects to improve Cuba's infrastructure—were also in the works.

## **Greater Access to Information**

Partially as a result of U.S. engagement, internet access on the island grew substantially. Google, most notably, signed a deal to allow storage of company content on Cuban servers.<sup>10</sup> While home access remains limited, there are more than 300 public WI-FI hotspots across the island, up from zero in 2015. The greater flow of people to and from the island also facilitated exchanges of knowledge and news.<sup>11</sup>

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7 Richard Feinberg, *Open for Business: Building the New Cuban Economy* (Washington D.C.: Brookings Institution Press, 2016), 142.

8 <http://www.npr.org/sections/parallels/2015/05/26/409707915/in-search-of-bandwidth-cuban-entrepreneurs-head-to-miami>

9 <https://static1.squarespace.com/static/55806c54e4b0651373f7968a/t/592f36dbdb29d6c96a19e3ea/1496266459829/Economic+Impact+of+Tightening+U.S.+Regs+on+Cuba.pdf>

10 <https://www.theguardian.com/world/2016/dec/12/google-cuba-deal-data-servers>; <http://www.denverpost.com/2017/01/14/cuba-internet-access-ties-us/>.

11 <https://www.wired.com/2017/07/inside-cubas-diy-internet-revolution/>

## Cuban-American Family Ties and Economic Support

Lifting restrictions on remittances and travel allowed Cuban-Americans to directly assist their families in Cuba buy food and household goods. Cuban-Americans also provided critical seed funding for the island's nascent private sector. Today, an estimated \$3 to \$5 billion in remittances connect the island to its diaspora.<sup>12</sup> Such transnational links—economic, but also cultural and political—represent an asset for Cuba's future, not an impediment.

## Cuban Civil Society Development

Cuba continues to be governed by a one-party state, and strictly anti-government political activities and demonstrations remains proscribed. At the same time, the climate of détente indirectly aided the expansion of independent citizen initiatives, spaces, and publications for critical debate.<sup>13</sup>

## Migration

In January 2017, the United States brought a virtual end to immigration policies granting undocumented Cuban migrants exceptional authorization to enter U.S. territory and become legal permanent residents. Officials concluded that the “Wet-Foot-Dry-Foot” policy, dating to the 1990s, contradicted U.S. policy toward other national groups, contributed to human trafficking, and led to a considerable brain drain from the island. In exchange for its elimination, Cuba agreed to accept greater numbers of Cuban deportees. An existing bilateral agreement on migration (stipulating the number of legal immigrant visas to be awarded annually) was revised to reflect those new terms. The Coast Guard recently confirmed that the number of undocumented Cuban migrants interdicted at sea has dropped sharply.<sup>14</sup>

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12 <http://www.thehavanaconsultinggroup.com/en-US/Articles/Article/30?AspxAutoDetectCookieSupport=1>

13 See: *Connecting Cuba*, Committee to Project Journalists, September 28, 2016, <https://cpj.org/x/69c9>; <http://www.univision.com/univision-news/latin-america/media-shake-up-in-cuba-young-journalists-emerge>. The report notes that Cuban civil society can no longer be defined in terms of a strict pro- or anti-government position. A growing political middle advocates for substantial reform without seeking to break entirely with all of the Cuban government's legacies or traditions.

14 <http://www.miamiherald.com/news/nation-world/world/americas/cuba/article150184537.html>. Note: Though the 1994 “Wet-Foot-Dry-Foot” policy has been revoked, the 1966 Cuban Adjustment Act remains on the books. Thus, a Cuban who overstays a legal temporary visa may still be able to regularize his/her status after one year.



## U.S. National Security

Following a detailed interagency review, in May 2015, the United States removed Cuba's designation as a state sponsor of terrorism. Subsequently, the United States and Cuba began collaborating more closely on vital issues with national security implications. These include counterterrorism, counter-narcotics, and law enforcement.<sup>15</sup> Likewise, by pursuing policies of engagement with the island, the United States was able to foster greater regional collaboration on important hemispheric challenges.<sup>16</sup>

## OBJECTIONS TO U.S.-CUBA RAPPROCHEMENT: DEBUNKING MYTHS

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Critics of the Obama administration's approach frequently objected that the President had ignored U.S. and Cuban-American popular sentiment. They also insisted that the new policy had conceded all without getting anything in return. If only Washington had held fast to prior ways, they argued, the Cuban government would not have received the U.S. "bailout" it so desperately needed. Instead, the Cuban government had been "rewarded" for bad behavior like continuing violations of human rights.

These arguments are based on partial or misleading understandings of the new U.S.-Cuba policy's purpose and effects. They also ignore the fact that the United States does not impose all-or-nothing political conditions on its diplomatic and economic relations with other non-democratic countries. According to countless polls, Obama's Cuba policy did reflect U.S. and Cuban-American popular will.<sup>17</sup> But even

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15 For example: <http://www.miamiherald.com/news/nation-world/world/americas/cuba/article75619857.html>

16 The successful negotiation of peace accords between the Colombian government and the FARC, which both Cuba and the United States supported, stands out in this regard.

17 As scholar William LeoGrande recently noted, "A January 2015 Pew Research poll...found 63% of the U.S. public in favor of restoring diplomatic relations and 66% in favor of ending the U.S. economic embargo... After Trump's election, support for normalizing relations remained strong, with 75% of Americans in favor of diplomatic relations and 73% in favor of lifting the embargo." Cuban-American opinion tracks with these trends. 63% of respondents to a 2016 Florida International University poll opposed the embargo. An even larger majority of Cuban-Americans in Miami-Dade County, 74%, supports lifting all restrictions on U.S. travel to the island. See: [http://www.huffingtonpost.com/entry/engagement-with-cuba-is-a-bipartisan-issue\\_us\\_58fb98aee4b0f02c3870eae6](http://www.huffingtonpost.com/entry/engagement-with-cuba-is-a-bipartisan-issue_us_58fb98aee4b0f02c3870eae6); <https://cri.fiu.edu/research/cuba-poll/2016-cuba-poll.pdf>.

ignoring the popularity of the policy, no objective analysis can conclude that the United States under President Obama simply “gave Cuba the store.”

Throughout the Obama years, the bulk of the embargo remained (and remains) in place. The Treasury and Commerce Departments continued to enforce its provisions.<sup>18</sup> While the Cuba Study Group believes that the U.S. embargo should be lifted fully, nothing of the sort occurred.<sup>19</sup> Only Congress has the power to lift the embargo in full.

Furthermore, several openings in U.S. commercial regulations were conditional on changes within Cuba. For example, rule changes intended to allow Cuba’s nascent private sector to import from or export its products to the U.S. market required that the Cuban state relinquish its complete control over those channels. Cuba, instead, continued to constrain the growth of the private sector via regulation.<sup>20</sup> Trade linkages remained modest as a result.<sup>21</sup>

Nor did bilateral rapprochement disproportionately benefit the Cuban government. The Cuban state did gain from greater economic ties. The taxes newly successful private establishments paid, the purchases visitors made in state-run establishments, and bilateral commercial transactions like landing fees for U.S. airlines at Havana’s airport did enter government accounts. But while the hospitality industry boomed on the backs of greater numbers of U.S. travelers, this was not enough to arrest a 1% decline in Cuba’s GDP in 2016.<sup>22</sup> Percentage gains in private sector growth and the income of many ordinary Cubans thus exceeded any revenue boost to the Cuban state.

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18 For example: <http://www.miamiherald.com/news/nation-world/world/americas/cuba/article62050647.html>

19 Even under the Obama administration’s narrow regulatory openings, permitted U.S. exports and investments required approval from the U.S. Treasury and/or Commerce Departments. Those applications were subject to case-by-case review.

20 Archibald Ritter and Ted Henken, *Entrepreneurial Cuba: the Changing Policy Landscape* (Boulder, CO: Lynne Rienner, 2014); Carmelo Mesa-Lago, et. al., *Voces de Cambio en el Sector No Estatal Cubano* (Madrid: Iberoamericana Verveurt, 2016).

21 One of the few deals to result from this provision was the shipment of a small amount of charcoal produced in Cuba by a private cooperative: <http://www.miamiherald.com/news/nation-world/world/americas/cuba/article128433209.html>.

22 <https://skift.com/2016/11/15/cubas-tourism-sector-sees-double-digit-growth-so-far-in-2016-thanks-to-the-u-s/>; <http://www.cbsnews.com/news/cubas-economy-shrinks-even-as-u-s-trade-builds/>.

If anything, expanded economic, cultural, and social ties with the United States accelerated Cubans' expectations for change. Cuban officials, however, proved reticent to sign deals with a host of interested American commercial partners, frustrating domestic audiences.<sup>23</sup> Growing links with the United States hardly gave Cuban authorities a pass in the eyes of the Cuban public. Rather than "bailing the government out" from some imagined scenario of sure collapse, engagement highlighted the insufficiency of the Cuban state's own reforms.

Finally, efforts toward normalization helped improve human rights on the island in important, if insufficient ways. Cubans today have greater freedoms to travel, buy and sell property, work for themselves, and access the internet than they did five years ago. Public discussions about Cuba's challenges are more vibrant than they have been in years. Cuba's treatment of domestic opposition groups remains objectionable, but the island's human rights record became subject to discussion in regular dialogues between U.S. and Cuban officials. By any objective historical measure, Cuba's human rights record was worse in the long era before normalization began.<sup>24</sup>

After five decades of failed sanctions that neither toppled the Cuban government nor improved the livelihoods of the Cuban people, only a cynic can contend that the Obama administration's policy "did not work" in just two and a half years. The Obama administration argued correctly that economic and government-to-government engagement could incentivize internal Cuban reform. But it also recognized that those decisions are and must be Cubans' to make.

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23 <http://www.miamiherald.com/news/nation-world/world/americas/cuba/article112522157.html>.

24 From the 1960s through 2010, long-term detentions of anti-government activists were not uncommon. Since then, short-term detentions became the norm. History shows that engagement proved most successful in addressing U.S. concerns. In 1979, negotiations with the U.S. government resulted in the release of 3,000 political prisoners. In 2010, negotiations between Spain, Cuba, and the Catholic Church released a group of activists jailed since 2003. Finally, the worst wave of long-term detentions in recent memory—in 2003—occurred when the George W. Bush administration pivoted U.S. policy to a hard line.

## THE TRUMP ADMINISTRATION'S PIVOT: NOT QUITE CANCELING "THE DEAL"

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President Trump assumed office in January 2017, pledging to roll back Obama's "one-sided Cuba deal." Accordingly, his administration tasked all major federal government agencies with undertaking a comprehensive review of U.S.-Cuba policy. All reported favorably to the White House on engagement's results. This strongly hints that the President's ultimate decision to rewind parts of the Obama approach did not respond to his administration's consensus view. Most influential was the determined advocacy of pro-embargo Senator Marco Rubio and Representative Mario Díaz-Balart, who relentlessly promoted a narrow Cuba policy agenda with the President that does not reflect the majority view of their constituents.<sup>25</sup>

In some respects the Trump administration's policy toward Cuba looks to be more bark than bite. The rollback consists of two fundamental changes.<sup>26</sup> First, U.S. travelers will no longer be able to visit the island as individuals for "people-to-people" exchanges. Group "people-to-people" programs, however, will continue. Second, remaining legal U.S. travelers and U.S. businesses will be forbidden from conducting future transactions or engaging in commercial partnerships with entities owned by the Cuban military. Diplomatic relations, though, will remain open. Similarly, Cuba will not be restored to the list of State Sponsors of Terrorism. Nor will other general licenses for travel and sending remittances—including for Cuban-Americans—be revoked. Presumably, bilateral channels on issues of mutual concern retain legal authority to continue. Cruise ships and commercial airlines will continue to land on Cuban shores. Even previous limits on the importation of cigar and rum for legal travelers have not been re-imposed.

Nonetheless, the announced changes will have important and damaging effects, not on the Cuban government, but on the Cuban people. As noted, self-certified "people-to-people" travel for individuals fueled a dramatic rise in the numbers of U.S. visitors to the island in the last year and a half. Their dollars energized the Cuban small business sector substantially. By cutting such visitors off, the Trump administration is significantly weakening an important agent

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25 <http://www.politico.com/story/2017/06/15/marco-rubio-donald-trump-cuba-plan-239597>

26 <https://www.whitehouse.gov/the-press-office/2017/06/16/national-security-presidential-memorandum-strengthening-policy-united>

of change in Cuban society. Already, private entrepreneurs have seen future bookings and reservations from U.S. travelers decline.<sup>27</sup>

The blockage of any transactions with the Cuban military responds to concerns about its outsized role in the Cuban economy, particularly in the tourism sector. The presumption is that funding the military also funds the Cuban government's repressive apparatus. As a result, a number of Cuban hotels and state-run stores will likely be off limits to U.S. travelers. Yet, several inconsistencies trouble the administration's rationale for this policy shift, or the likelihood that it will have its intended effect.

First, the role of the Cuban military in the Cuban economy (as a percentage of GDP) has been significantly exaggerated. Frequently cited estimates claim the military controls as much as 60% of the island's GDP. The truth is closer to 4%. Military holding company GAESA may control as much 21% of total hard currency income.<sup>28</sup> While this sum is concerning, without it, the Cuban state still has other ways to access the hard currency its security apparatus needs.

Second, European, Canadian, and other international clients at military-owned state and joint-venture enterprises will continue to generate substantial revenue for the Cuban state. U.S. policy alone cannot deprive the Cuban military of all, or even a significant amount, of its resources. Notwithstanding U.S. restrictions, Cuba projects that tourism to the island will continue to grow.<sup>29</sup> If this is true, GAESA revenues may still increase, regardless of U.S. policy changes.

Third, the White House has indicated that the blockage on conducting business with entities with military ties is intended to push legitimate U.S. travelers into the private sector of the economy. Yet, by banning individual people-to-people travel, the damage the administration does to the private economy will be far more extensive. By diverting remaining "people-to-people" travelers into organized group trips—which remain authorized—the Trump policy rewards direct economic interaction with Cuban government entities (tour agencies, non-military-owned hotels, etc.) One can make a similar case with the cruise industry. Those companies' contributions to the Cuban economy

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27 <https://skift.com/2017/06/30/cuba-sees-reservation-cancellations-since-trumps-policy-reversal/>

28 [http://www.huffingtonpost.com/entry/does-the-cuban-military-really-control-sixty-percent\\_us\\_59530b0ee4b0f078efd985d8](http://www.huffingtonpost.com/entry/does-the-cuban-military-really-control-sixty-percent_us_59530b0ee4b0f078efd985d8)

29 <https://www.reuters.com/article/us-cuba-tourism-idUSKBN19K01B>

are limited to docking fees paid to the Cuban state and brief shore activities of their passengers.

The Trump administration's policy will thus have the opposite effect of its stated intent. The stability of state institutions will not be threatened, especially in light of Cuba's considerable tourist traffic from and commercial dealings with the rest of the world. Instead, Cuban families and small businesspeople will bear the brunt of the pain. These developments are particularly unwelcome in light of recent signs that Cuba's government is not making it any easier for Cuba's private sector to thrive. On the heels of President Trump's policy announcement, the Cuban government announced a "freeze" to issuing licenses for small businesses such as restaurants and bed and breakfasts. While the measure is meant to be temporary, the effect of the new U.S. policy will be to add insult to injury.<sup>30</sup>

## **FUTURE ISSUES: RECOMMENDATIONS FOR SHORT-TERM, MITIGATING ACTION**

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**M**any of the new policy's details still need to be ironed out. The Treasury and Commerce Departments have begun work to translate President Trump's June National Security Memorandum on Cuba into concrete changes to the Cuban Assets Control Regulations, the governing body of rules for implementing the embargo. But no date has been set for when the regulations will be written. Thus, there are still considerable opportunities to mitigate the concrete impact of the Trump administration's policy change by shaping how new regulations are designed. What follows is a series of recommendations to U.S. officials intended to productively mold the policy's effects.

### **Continue core bilateral agreements pertaining to national security cooperation.**

As noted, the U.S. and Cuban governments signed nearly two-dozen bilateral agreements and memoranda of understanding on topics ranging from law enforcement cooperation to fisheries protection. While we do not expect the Trump administration to pursue further bilateral agreements under its new policy, we urge it to honor existing commitments. In particular, agreements on counter-narcotics, migration, law enforcement, and counter-terrorism cooperation are consistent with the Trump administration's national security

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<sup>30</sup> <http://www.cubadebate.cu/noticias/2017/08/01/la-gaceta-oficial-de-cuba-anuncia-nuevas-medidas-para-el-trabajo-por-cuenta-propia/#.WYizgq2ZM8Y>.

priorities. Professional, impartial engagement between relevant U.S. government officials and their Cuban counterparts is crucial to keeping such cooperative agreements intact. Such ties can also serve as vital “back channels,” as they have in the past, for discrete contacts between both governments at a time when bilateral ties are otherwise strained.

### **Appoint a career diplomatic professional as Ambassador to Cuba.**

Ambassador Jeffrey DeLaurentis, the Chief of Mission of the United States Embassy since it was officially reopened in 2015, recently returned to Washington for a new diplomatic assignment. His nomination as Ambassador to Cuba was never given a hearing in Congress. Regardless of the Trump administration’s approach, the designation of an ambassador signals that the United States takes its relationship with a country seriously, even when the United States has serious disagreements with the country in question. The designation of an ambassador would also facilitate the continued national security cooperation described above.

### **Continue welcoming Cuban visitors to the United States for people-to-people exchanges.**

While the policy of normalization is best known for increasing the number of U.S. visitors to the island, it also resulted in increased Cuban visitors to the United States. Such visitors participated in professional and cultural exchanges, small business training programs, capacity-building workshops, academic events, artistic exhibitions, and musical performances.<sup>31</sup> Maintaining a robust program of cultural engagement creates people-to-people goodwill that is not inconsistent with the Trump administration’s desire to limit resource flows to the Cuban government. We urge the U.S. Embassy in Havana, State Department, and Department of Homeland Security to continue favorably processing Cuban visa applications for such programs.

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<sup>31</sup> For example: <http://www.miamiherald.com/entertainment/ent-columns-blogs/jordan-levin/article23090049.html>

**Define the ban on “Engagement with Cuban Military” in transparent, clearly delimited terms to avoid regulatory ambiguity and needlessly petty effects.**

As noted, the Trump administration has made it a priority to block future U.S. individual and commercial engagements with entities on the island linked to the Cuban military. Yet, depending on how widely or narrowly this is defined, such a policy could have needlessly petty effects. Will remaining legal U.S. travelers only be banned from staying in certain hotels? Or will they also be blocked from buying basic food products in state-run grocery stores, virtually all of which are linked to a military holding company? Will only direct transactions with military-owned state companies be banned? Or will transactions with commercial middlemen—like the foreign hotel operators that administer many Cuban hotels in joint venture partnerships—still be allowed? Such complexities create an enforcement minefield and should compel regulators to be crystal clear. If the Trump administration’s goal is to keep U.S. travelers out of major state-owned “tourist” enterprises, but not block them from buying a can of soda, we urge regulators to narrowly define those terms.

**Exclude common citizens from the newly expanded list of “prohibited officials of the Cuban government” barred from receiving remittances.**

The President’s June 16 National Security Memorandum on Cuba calls for significantly expanding the list of “prohibited officials of the Cuban government” with whom U.S. citizens cannot legally engage in commercial ties. Such individuals are barred, among other things, from receiving remittances from U.S. nationals. Specifically, the President ordered that all employees of the Ministries of the Armed Forces and Interior now be included on the list. That could include, however, everyday Cuban citizens working at state-run stores owned by the Armed Forces (often earning \$25 a month) and young Cubans fulfilling their obligatory two years of military service. Such a policy would impose undue hardship on as many as 1 million common Cuban citizens.<sup>32</sup> We urge the administration to clearly and narrowly define new additions to the “Prohibited Officials of the Cuban Government” list.

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<sup>32</sup> [http://www.huffingtonpost.com/entry/trump-policy-could-cut-remittances-to-a-million-cuban\\_us\\_594946d8e4b028db60c61490](http://www.huffingtonpost.com/entry/trump-policy-could-cut-remittances-to-a-million-cuban_us_594946d8e4b028db60c61490)



## **Honor and do not create obstacles for existing U.S.-Cuba commercial agreements.**

The Trump administration has pledged to not retroactively apply its new restrictions on commercial engagement to U.S. companies that previously secured agreements with Cuban counterparts. Existing U.S. government licenses for operating in Cuba will remain valid. We urge the administration to clarify that, new restrictions notwithstanding, such licenses will also be renewed when required.

## **Propose to Canada and Cuba the creation of a joint investigation into recently revealed incidents regarding U.S. and Canadian diplomats on Cuban soil.**

Over the summer and early fall of 2017, the State Department revealed that as many as nineteen U.S. diplomats in Cuba suffered health effects beginning in the fall of 2016 after exposure to damaging auditory devices. The fact that the alleged incidents began during the Obama administration (when relations were positive), and that Canadian diplomats also suffered similar symptoms, lends credence to the Cuban leadership's insistence that it was not involved. The United States should offer to work transparently with Canadian and Cuban authorities to investigate this bizarre episode. Cuba has already demonstrated its willingness to do so by allowing FBI agents and Canadian counterparts to visit the island.

## **Do not dedicate excess resources to Cuba sanctions enforcement.**

The Trump administration has pledged to increase enforcement of U.S. restrictions on travel to Cuba through the Treasury Department's Office of Assets Control (OFAC). The June 16 National Security Memorandum on Cuba also specified that the Treasury Department shall issue a report on the implementation of tighter enforcement within 180 days of the new regulations coming into effect.<sup>33</sup> Auditing individual itineraries and traveler transactions creates an expansive, and expensive, regulatory burden, far outstripping the national security threat that Cuba poses to the United States.<sup>34</sup> Before the Treasury Department produces a report on its efforts to enforce Cuban sanctions compliance,

<sup>33</sup> <https://www.whitehouse.gov/the-press-office/2017/06/16/national-security-presidential-memorandum-strengthening-policy-united>.

<sup>34</sup> For the first time, the 2016 Country Reports on Terrorism did not even mention Cuba. See: <http://www.miamiherald.com/news/nation-world/world/article162492628.html>

we ask that the administration also make public what financial and staff resources will go to such an effort. The U.S. public and Congress deserve the opportunity to judge if federal funds are being judiciously used, especially relative to other OFAC sanctions programs against nations like North Korea and Iran.<sup>35</sup>

### **Explore options to assist the Cuban people in the wake of Hurricane Irma.**

In early September, category 5 Hurricane Irma left a trail of flooding and destruction along the northern coast of Cuba. Havana, provincial towns, and some of Cuba's northern keys were severely affected, along with critical agricultural regions. The Trump administration should investigate what resources may be available to assist Cuba through the Federal Emergency Management Administration's International Affairs Division. Likewise, the Treasury and Commerce Departments should issue or reauthorize general licenses to U.S. corporations, non-profits, and other entities in a position to render assistance, donate or sell rebuilding materials and food, or invest in critical non-military-owned Cuban infrastructure. Should previous general licenses issued by the Obama administration remain valid, the Trump administration should publicly say so. Expressing sympathy for and facilitating critical assistance to the Cuban people at a time of need—including via official diplomatic channels—is not inconsistent with the Trump administration's stated opposition to Cuba's government. Doing so accrues goodwill.

### **Avoid Senseless Confrontational Rhetoric.**

If the foreign policy professionals in the Trump administration seek to maintain any semblance of practical contact with Cuban counterparts on issues like migration, narco-trafficking, disaster relief, or the safety of U.S. diplomats in Cuba, they should insist that overheated and ultimately fruitless tough talk is a hindrance. Considering Cuba's delicate political transition—Fidel Castro passed away in late 2016, and Raúl Castro is slated to step down in February—caution would also be wise, so as to not tip the balance of Cuba's domestic politics toward the internal hardline.

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<sup>35</sup> A troubling precedent warrants this concern. During the George W. Bush administration, more OFAC employees were dedicated to enforcing compliance with Cuba sanctions than tracking Osama Bin Laden's finances. Leogrande and Kornbluh, 356.

## **Complete efforts to end Cuba’s domestic tax on U.S. dollar conversions.**

In 2016, the Obama administration began efforts to normalize certain aspects of financial relations with Cuba. The Treasury Department announced that it would allow U.S. banks to process so-called “U-Turn Payments” in U.S. dollars that originate outside of the United States but involve Cuba in some way. In return, Cuba pledged to eliminate the 10% tax it charges on converting U.S. dollars to local currency.<sup>36</sup> Despite these pledges, policy changes were not sufficient to lead banks to act. We call on the Trump administration to move this sensible compromise forward. Pushing U.S. banks to process certain transactions with Cuba in U.S. dollars only marginally improves the Cuban government’s ability to do business internationally (the island’s government has forged workarounds). However, if Cuba removes its 10% dollar conversion tax, average Cuban citizens—including the small businesspeople who count on remittances for investment funds—stand to benefit considerably.

## **Closely oversee and broaden the use of “democracy promotion” funds.**

Executive Branch agencies may receive increased funds from the U.S. Congress for “democracy promotion” in Cuba.<sup>37</sup> In the past, these programs were a thorn in the side of the Cuban government. But as General Accountability Office (GAO) reports showed, they also were hindered by financial waste and abuse.<sup>38</sup> The Obama administration initiated efforts to depoliticize the portfolio of subcontractors engaged in such work. If providing relief to human rights defenders remains important, so, too, is cultivating a policy of U.S. non-interference in Cuban affairs. To do otherwise pigeonholes peaceful voices in Cuba advocating for change as lackeys of foreign interests. In the past, unregulated disbursement of “democracy promotion” funds led to several highly public embarrassments.<sup>39</sup> We urge the administration to commit to careful oversight.

36 For a summary, see: <http://www.bakerbotts.com/ideas/publications/2016/03/ofac-and-bis-announce>; <http://www.miamiherald.com/news/nation-world/world/americas/cuba/article66775447.html>.

37 <https://www.congress.gov/115/bills/hr3362/BILLS-115hr3362rh.pdf>. Interestingly, the Trump administration’s own budget proposal initially included \$0 for such activities. See: <http://www.miamiherald.com/news/nation-world/world/americas/cuba/article152299727.html>

38 <http://www.gao.gov/new.items/d07147.pdf>; <http://www.gao.gov/assets/660/651565.pdf>

39 Most notably, consider the cases of Zunzuneo, the failed “Cuban Twitter,” and imprisoned U.S. government subcontractor Alan Gross.

## CONCLUSION: LOOKING TOWARD 2018

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**U**nder President Obama, intractable antagonisms between the United States and Cuba gave way to a new dynamic of careful collaboration and cautious negotiation. Now, President Trump has partially rewound the clock. But if embargo supporters hoped the Trump administration would “cancel the deal,” they must be sorely disappointed. In many respects, the muddled message of the Trump administration’s policy confirms just how far the Cuban policy debate has moved.

Even so, the Trump administration’s new Cuba policy represents a setback for U.S.-Cuban relations and the Cuban people. Indeed, the Trump administration’s measures stand to impact precisely those sectors in Cuba the White House says it wants to support. Small businesses and common citizens, not the Cuban government, will bear the brunt of tightened regulations’ effects. Once again, the United States risks isolating itself from Cuba far more than it could ever isolate Cuba from the rest of the world.

Opportunities still remain, however, to tailor the impact of the new policy. The Cuba Study Group continues to believe that U.S. interests and the just aspirations of all Cubans for a more democratic, prosperous future are best served by a normalization policy of increased economic openness and creative diplomacy. Yet, in the absence of such a commitment, we call on the Trump administration to carefully write its forthcoming regulations in ways that minimize unnecessary regulatory burdens and hurt average Cuban people the least.

The Cuba Study Group also calls on Cuban authorities to use this opportunity to re-energize domestic conversations about economic and political change. Whether under Presidents Obama or Trump, Cuba faces a series of challenges not limited to the tenor of the island’s relationship with the United States. The Cuban economy remains in a delicate position. Important items on the domestic policy agenda since 2010—like the elimination of Cuba’s vexing dual currency system—remain on hold. While Cuba did succeed in renegotiating the terms of much of its international debt in 2015-2016, the Seventh Congress of the Cuban Communist Party in 2016 produced little in the way of advances toward internal economic evolution.<sup>40</sup> GDP growth

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<sup>40</sup> <http://cubajournal.co/cuba-commences-debt-repayment-after-favorable-restructuring/>; <https://www.wsj.com/articles/castro-offers-tough-appraisal-of-cubas-slow-progress-on-economic-reforms-1460848872>; <http://www.albrightstonebridge.com/files/ASG%20-%20Cuba%20Party%20Congress%20Update.pdf>.

remains low and external pressures from Venezuela are not dissipating. In tandem, demands for greater political participation, even under the framework of “socialism,” are on the rise.

Recent efforts by the Cuban government to temporarily curtail private sector expansion are not a welcome sign.<sup>41</sup> The state’s rationale is that it seeks to end illegalities, tax evasion, and corruption in the sector. But in an economy where petty corruption in the state sector is also endemic, and where no wholesale or credit markets exist, the cash-dominant private sector has been singled out unfairly for blame. With any luck, requirements that businesses use bank accounts (which the state is apparently now developing) will be a step toward providing the full “legal personality” business owners have long pursued. But the government could have implemented such regulatory systems without announcing a temporary pause in issuing private sector licenses.

The climate for discussing these challenges, moreover, also has worsened of late. Reformist voices in Cuban civil society that supported normalization efforts with the United States are facing considerable pressure. Hardline defenders of Cuba’s internal status quo—economically, but also politically—are on the rise.<sup>42</sup> It would be a mistake to see these increased pressures as nothing more than a response to the Trump administration’s policy announcement; the high stakes of the coming political transition in 2018 are likely to blame. Still, the atmospherics of renewed confrontation with Washington do not help.

It behooves Cuba to act with greater speed. To significantly retrench the expansion of the private sector and public debate not only contravenes Cuba’s economic interests in the absence of immediate alternatives; it strengthens the Trump administration or other future U.S. officials’ ability to perpetuate the embargo by suggesting that Cuba remains averse to change. As Cuba approaches a historic leadership transition in 2018, authorities should focus on removing obvious economic redundancies, fostering new forms of economic ingenuity and opportunity, and encouraging peaceful debate about the island’s many challenges in the public sphere. If U.S. sanctions remain fundamentally unfair and counterproductive, the most powerful case the Cuban government can make for Washington to change its ways would be to independently take more proactive, needed steps toward internal reform.

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41 <http://www.cubadebate.cu/noticias/2017/08/01/la-gaceta-oficial-de-cuba-anuncia-nuevas-medidas-para-el-trabajo-por-cuenta-propia/#.Wa7nsRS9jzI>

42 For example: [http://www.cubadebate.cu/opinion/2017/05/30/la-tercera-via-o-centrismo-politico-en-cuba/#.Wa\\_7cBS9jzI](http://www.cubadebate.cu/opinion/2017/05/30/la-tercera-via-o-centrismo-politico-en-cuba/#.Wa_7cBS9jzI)