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RESTRICTIONS ON TRAVEL TO CUBA

HEARING

BEFORE A

SUBCOMMITTEE OF THE

COMMITTEE ON APPROPRIATIONS

UNITED STATES SENATE

ONE HUNDRED SEVENTH CONGRESS

SECOND SESSION

SPECIAL HEARING

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RESTRICTIONS ON TRAVEL TO CUBA

MONDAY, FEBRUARY 11, 2002

U.S. SENATE,
SUBCOMMITTEE ON TREASURY AND
GENERAL GOVERNMENT,
COMMITTEE ON APPROPRIATIONS,
Washington, DC.

The subcommittee met at 10:07 a.m., in room SD–192, Dirksen Senate Office Building, Hon. Byron L. Dorgan (chairman) presiding.

Present: Senator Dorgan.

OPENING STATEMENT OF SENATOR BYRON L. DORGAN

Senator DORGAN. We will call the meeting to order. First of all, let me welcome all of you to this hearing. This is a hearing of the Subcommittee on Appropriations dealing with Treasury and General Government. This hearing is to deal with a subject that, of course, most of you know is fraught with controversy, the subject of Cuba travel and especially, from the perspective of the subcommittee, the enforcement of the Cuban travel restrictions.

This subcommittee funds, an agency called the Office of Foreign Assets Control. That office in the Treasury Department is central to the issue of trying to track terrorists' assets, among other things. The National Terrorist Assets Tracking Center is housed within OFAC, the Office of Foreign Asset Control. Working with the Financial Crimes Enforcement Network, OFAC leads our Nation's war against global terrorist financing. It does that with a relatively small budget. Indeed, the President's budget this year proposes to increase OFAC's budget by about $2 million in fiscal year 2003 over fiscal year 2002.

One of the reasons that we wanted to have a hearing on this issue is to evaluate what has been happening with respect to OFAC and its use of resources in enforcing the travel restrictions, especially with respect to Cuba. We have had numerous reports in the past year or so that the Office of Foreign Assets Control has dramatically increased the number of enforcement actions against U.S. citizens traveling to Cuba.

Particularly in the aftermath of September 11, one must ask: What is the best use of assets at OFAC and at the Treasury Department? Should it be focusing its resources on tracking the U.S. assets of terrorists, thereby helping prevent future attacks, or should it be using precious resources to enforce the travel restrictions with respect to Cuba?

While this hearing is not about the policy of restrictions on travel to Cuba, it is about the funding of OFAC and how much is being devoted to enforcement of that policy. Let me say that my feeling is that the travel restrictions with respect to Cuba are ill-advised. I have no Truck for Fidel Castro. He is a dictator and his mismanagement of the Cuban economy and human rights violations have brought misery to the Cuban people. But in an attempt to punish Fidel Castro, we are restricting the freedom of the American people to travel. I do not think that those restrictions hurt Fidel Castro. They certainly do disadvantage the American citizen.

Despite the fact that I am philosophically opposed to these restrictions and would love to see democracy in Cuba, I believe that the best way to achieve progress in Cuba is very much the way we achieved progress in the old Soviet Union and the way we are striving to achieve progress, for example, in China, and that is through more interaction and more involvement and more travel and more education. People-to-people interaction worked to bring down the Soviet government, to bring about significant reforms in China, and I believe they can do the same in Cuba.

Let me just say, as a Senator from a farm State, I would very much like to see family farmers in North Dakota be able to travel to Cuba and sell their crops to Cuba without impediment. This travel ban only hinders such sales.

I will cite one example of how these travel restrictions can impede our agricultural sector and family farmers. In January of this year, the Farm Foundation applied for a license to send a delegation of 100 people to Cuba. They were turned down. This is a nonprofit group based in Illinois. Two former Agriculture Secretaries were going to join the delegation. The current Agriculture Secretary and Deputy Secretary and Under Secretary all served on the board of this Farm Foundation before resigning to take their current positions. Yet these 100 people were denied the opportunity through this organization to go to Cuba to talk about agricultural issues.

I do not know why OFAC did not approve the Farm Foundation's request for a license. I am sure OFAC can describe its reasons. But at the end of the day, this incident, in my judgment, highlights the absurdity of this policy. It makes no sense that a delegation looking to promote sales of American farm products to Cuba has to apply for a license and then jump through hoops just to be able to travel to that country, and in this case, discover that the proposal to go is denied.

One of the interesting aspects of this issue is that on July 13 of last year, President Bush announced that he had asked the Treasury Department and the Office of Foreign Assets Control to step up enforcement of Federal regulations governing the embargo with, quote, "a view towards preventing unlicensed and excessive travel." I have a quote from the Associated Press from that day which caught my attention. It quotes President Bush as saying that the Treasury should provide more money to its Office of Foreign Assets Control to hire additional personnel to monitor travel to Cuba, trade, and the limited amounts of money that Cuban Americans are allowed to send home to their families.

I saw that in July of last year and wondered as a result of that what was going to happen if OFAC beefed-up enforcement to try to deal with this travel issue. What we have learned is that there have been substantial increases in enforcement activities. I have a chart that shows enforcement actions over the last couple of years. It depicts a jump in fines levied for travel to Cuba, from 188 in 2000, to 766 in 2001. So it appears that something has changed and we will talk a little about that today.

At the hearing today, the first panel will include witnesses describing their experiences with respect to OFAC activity and Justice Department activity. It will also include some organizations that have faced licensing problems, as well as non-government organizations. We will have a second panel with Richard Newcomb, Director of OFAC and James Carragher, Coordinator for Cuban Affairs at the Department of State, and a third panel with former Senator Dennis DeConcini from Arizona and Ambassador Dennis Hayes, Vice President, Cuban American National Foundation. So that represents the agenda for the hearing.

As I indicated when I started, I understand that this is an issue of some controversy, but I think it is timely and important for us to discuss what are the resources being devoted to enforcement of travel restrictions to Cuba, how are they being devoted to it, to what end do they enhance this country's foreign policy, and to what end do they simply restrict the freedom of the American people to travel.

Our first panel is a panel with four individuals who have had some experience with this issue. They have all traveled to Cuba under various circumstances that they will describe, and have been the subject of enforcement actions by OFAC.

Marilyn Meister is someone who went on a bicycle trip organized by a Canadian tour group. Cevin Allen was fined after taking his parents' ashes to Cuba for burial. John Harriman was fined after attending a board game competition in Cuba.

Let me begin by asking the witnesses to state their name and where they are from. We will proceed with you, Ms. Meister. Welcome to the committee and thank you for coming to Washington, D.C., today.

STATEMENT OF MARILYN MEISTER

Ms. MEISTER. Thank you. Good morning, Senator. I am a retired teacher from a small town in Wisconsin. I was born on a farm in Wisconsin 75 years ago and I have always enjoyed being active. Since retiring, I have become an avid traveler. I favor trips that both include activities, such as hiking and biking, and expose me to different cultures. I have gone on bike trips in Cuba, France, Portugal, trekked in Nepal, hiked in the South of France, Tuscany, England, Canada, and many States within the United States and traveled independently in Costa Rica.

It has been an important and fulfilling part of these trips to share my experiences with others. I have written travel articles for publications, including senior citizen newspapers, and have come to think of myself as a freelance travel writer. An article I wrote about my trip to Cuba was published 2 years ago.

The cultural lessons I learned from traveling and interpersonal connections I have made are just as special to me, if not more so, than the exhilarating physical challenges of biking and hiking. This was certainly true of my trip to Cuba.

I learned from a friend about a bike trip organized by a Canadian group out of Toronto. The travel agency sent me quite a bit of information and printed material and I also had some phone conversations with them. All along, they assured me that it was perfectly legal for Americans to travel to Cuba as long as they did not go directly and they did not spend any money in Cuba. I strictly adhered to both of these requirements. Their brochure states, quote, "Congress has passed a law which makes it legal for U.S. citizens to travel to Cuba, although they cannot spend any money there. So when you travel to Cuba, you are fully hosted by our company and you do not spend any money in Cuba. Our programs are fully escorted from the time you arrive in Cuba and totally under our control. If you do need to buy something in Cuba, our escort will do it for you, maintaining the legality of your trip."

The trip took place in February 2000. We biked through the countryside of Western Cuba, which was extremely impressive. I was deeply moved by the beauty and diversity of the scenery, as well as the kindness and genuine warmth of the people.

I was excited to learn before the trip began that we would be stopping at a small rural school in a very poor and humble area. I decided to take some educationally-related materials along as gifts, including some children's picture books, crayons, and pens. The principal and children's grateful reception of these items was overwhelming, and as an educator, I found this encounter most gratifying. It was heartwarming to see my counterparts make up for their limited resources with an enthusiasm for learning and to see the positive effect of their efforts on the children.

Cuba continued to be a welcoming place, and I like to think that my presence there gave the Cubans my group encountered a positive view of Americans. After a week of biking, sightseeing in Havana, and gaining a wonderful impression of the Cuban people, I flew back to Toronto. However, as soon as I stepped off the plane, I was in for a series of surprises.

I was told that I would have to run in order to catch my returning Air Canada flight to Chicago. I came dashing up to the U.S. Customs desk in a hurry, hoping to pass through customs quickly and make my flight. The Customs agent asked me where I was coming from and I immediately answered, "Cuba." I understood my travel to have been legal and, of course, it would not have occurred to me to tell her anything other than the truth. To my surprise, this answer set the Customs agent into a rage. She yelled as she searched my luggage and was unable to find any purchases made in Cuba, as I had made none. As she questioned me, I said no more than necessary to honestly answer her questions, hoping she would soon calm down. Unfortunately, I was mistaken.

The Customs agent continued to make me feel like the most horrible of criminals. A representative from Air Canada announced from the doorway that I needed to hurry as my flight was about to leave. The Customs agent replied furiously, "She is not going anywhere." Then she went into a full-scale tirade. She demanded

that I remove my fanny pack and threw its contents all over the counter. She snatched my passport from a pile of my belongings strewn on the counter, shouted at me to pick up my belongings, and left to make a photocopy of my passport. When she returned, she handed me my passport and warned with me with a touch of glee, "You will be hearing from the Treasury Department."

I was quite chagrined to be treated in such an abrasive way by a representative of my own government after a week of seeking to be a laudable representative of my country while in Cuba. Needless to say, I missed my flight and I was forced to spend a lonely, cold, and tiring night in the Toronto airport.

When I finally returned to Chicago, my ordeal was far from over. As the Customs agent had warned, within months, I received my first enforcement letter from OFAC, called a "Requirement to Furnish Information." A full year later, a second notice arrived demanding a civil penalty of $7,500. With the help of a pro bono legal counsel, I have requested a hearing before an administrative law judge and have been waiting for a hearing for almost a year.

In my opinion, the ban on tourist travel to Cuba is senseless and misguided. The ban does not punish Fidel Castro, it punishes ordinary Americans like myself who are losing out on an invaluable opportunity to meet, exchange ideas with, and learn from our counterparts in Cuba.

I call upon Congress to pass legislation this session that will allow Americans to travel freely to Cuba. Thank you for allowing me to speak with you about this matter.

PREPARED STATEMENT

Senator DORGAN. Ms. Meister, thank you very much. We will have some questions following the presentations.

[The statement follows:]

PREPARED STATEMENT OF MARILYN MEISTER

Good morning, Senators. I am a retired teacher from a small town in Wisconsin. I was born on a farm in Wisconsin 75 years ago, and I have always enjoyed being active.

Since retiring, I have become an avid traveler. I favor trips that both include activities such as hiking and bicycling, and expose me to different cultures. I have gone on bike trips in Cuba, France, and Portugal, trekked in Nepal, hiked in the south of France, Tuscany, England, Canada and many states within the United States, and traveled independently in Costa Rica. It has been an important and fulfilling part of these trips to share my experiences with others. I have written travel articles for publications, including senior citizen newspapers, and have come to think of myself as a freelance travel writer. An article I wrote about my trip to Cuba was published 2 years ago. The cultural lessons I learned from traveling, and interpersonal connections I have made, are just as special to me, if not more so, than the exhilarating physical challenges of biking and hiking. This was certainly true of my trip to Cuba.

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Thank you for allowing me to speak with you about this matter.

Senator DORGAN. Mr. Allen, please proceed. Thank you very much for being here.

STATEMENT OF CEVIN ALLEN, SAMMAMISH, WASHINGTON

Mr. ALLEN. Good morning, Senator Dorgan and members of the subcommittee. My name is Cevin Allen and I reside in Sammamish, Washington, which is about 20 miles outside of Seattle. I currently work as a supervisor with the County Department of Transit, where I have been employed for 25 years this June. Thank you for inviting me to speak to you about a matter that is of tremendous concern, not only to myself, but also to many other Americans. Legislation legalizing travel to Cuba for Americans is long overdue and we are looking to the Congress of the United States to enact such corrective legislation this session.

My interest in Cuba and love for the Cuban people reaches back to my early childhood. I was born in Seattle, Washington, in 1945 to Ralph and Mildred Allen, missionaries with the Assembly of God Church. It is a Protestant Pentecostal church. From 1948 until 1955, my parents and I, along with an older brother, lived in Cuba. My parents were missionaries with the church in Contramaestre. It was called Iglesia Evangelica Pentecostal, which is Assembly of God. Contramaestre is located in the south end of the island, near Santiago. While in Cuba, my parents bought a piece of land, supervised the building of a simple but beautiful church, and built its congregation.

After having spent my formative years in Cuba, making my first impressions with Cubans, and learning Spanish as my first language, I feel as though a part of me is Cuban. I have many wonderful memories of my childhood in Cuba and a love for its people. Even though we were Protestants in a Catholic land, we were always warmly welcomed.

My family left in 1955, intending simply to renew our visas in the United States, visit with family members, and then return to Cuba. Unfortunately, we found ourselves unable to return because Cuba was undergoing a revolution and the church feared for our safety. After the revolution, we were saddened to learn that the property on which our church sat had been nationalized and the building had been converted into a mattress factory. For the next 30 years, my parents maintained close connections with the staff and members of its congregation through letter correspondence.

In 1984, my parents and I were excited to learn that the Cuban government was going to reinstate the nationalized property back to a Protestant church. My mother, my partner, and I visited Cuba that year after receiving permission to do so from the Reagan administration. While there, we visited the site of our church and were reunited with our Cuban friends and co-religionists from some 30 years prior. Shortly thereafter, my parents made a gesture of giving the property title back to the church. My parents were delighted that the Cuban government had agreed to reinstate the land as a place of worship.

In 1987, my parents were both killed in a house fire that completely destroyed their home. I promised myself then that I would bring their ashes to Cuba, a place they had always loved. Ten years later, in 1997, November, my partner and I made a brief journey to Cuba to give my parents' ashes a final resting place. During the one full day we spent in Cuba, I scattered part of their ashes on the grounds of the church in Havana and another part at sea. I also brought along a Bible that my parents had used while in Cuba that had miraculously survived the fire and presented it to Reverend Jaime Rodriguez, a former student of my parents, who now leads the largest Protestant congregation in Havana. It was this trip that finally allowed me to deal with the pain of losing my parents, to feel at peace with their deaths, to fulfill my family duty to them and give them a burial I knew they would have wanted, and to experience a sense of closure.

Unfortunately, these positive feelings were soon countered by my interaction with Customs agents on my return to the United States via Nassau. Upon questioning, I immediately told the agents about

my travel to Cuba. This apparently angered the agents, as they became belligerent and searched all of our bags as if we were common criminals. The tension of the moment was heightened by the fact that we had only a 50-minute layover in Nassau and we literally had to run at a fast clip to make our connecting flight once we were released by the Customs agents.

The reception I received from the Customs agents in Nassau turned out to be only a small part of the much larger dark shadow cast on my trip to Cuba by U.S. Government officials. The greatest shock came 2 months later, when my partner and I each received a notice from OFAC in January of 1998 demanding that we pay a civil penalty of $7,500 each for traveling to Cuba illegally. Taken together, OFAC was demanding the outrageous sum of $15,000 from our household.

After speaking to OFAC agents on the phone and explaining the circumstances surrounding our trip, OFAC agreed to reduce the original sum of $15,000 to a joint penalty of $10,000—a figure that I am sure you agree is still quite high.

Fortunately, my partner and I learned about the Center for Constitutional Rights' Cuba Travel Docket and the Center agreed to take on our case. Through the Center's vigorous legal representation, we were able to reach a settlement with OFAC for a reduced penalty of $700.

These experiences have left me with the firm conviction that it is wrong for the United States Government to punish Americans for traveling to Cuba. Americans are permitted to travel freely to other socialist countries, including Russia, the People's Republic of China, and Vietnam. Cuba is our next-door neighbor and it is in the interest of the United States to develop a good relationship with it. Toward this end, the United States should encourage, rather than penalize, friendship between the American people and the Cuban people. Each group has much to learn from the other.

PREPARED STATEMENT

I commend the subcommittee for examining the ban on travel to Cuba and hope that my story will shed some light on how the ban represents bad domestic and bad foreign policy. I implore Congress to put an end once and for all to this outdated ban and to legalize travel to Cuba. Thank you.

Senator DORGAN. Mr. Allen, thank you very much.

[The statement follows:]

PREPARED STATEMENT OF CEVIN ALLEN

Good morning, Senator Dorgan and Members of the Subcommittee. My name is Cevin Allen, and I reside in Sammamish, Washington, which is about 20 miles outside of Seattle. I currently work as a supervisor with the county department of transit, where I will have been employed for twenty-five years this June. Thank you for inviting me to speak to you about a matter that is of tremendous concern not only to myself, but also to many other Americans. Legislation legalizing travel to Cuba for Americans is long overdue, and we are looking to the Congress of the United States to enact such corrective legislation this session.

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Thank you.

Senator DORGAN. Next, we will hear from Mr. John Harriman. Mr. Harriman, would you proceed?

STATEMENT OF JOHN HARRIMAN, CHICAGO, ILLINOIS

Mr. HARRIMAN. Good morning. Good morning, Senator Dorgan and members of the subcommittee. My name is John Harriman and I am a 37-year-old software developer from Chicago, Illinois. For the past 13 years, I have been an avid player of a board game called "Go," which is a centuries-old game that originated in Asia and has recently begun to gain popularity in the United States and other non-Asian countries.

It was my passion for this game that led to my one and only visit to Cuba in January of 2001, to compete in an international Go tournament, and it was this travel, or rather the Treasury Department's imposition of a $7,500 civil penalty based on this travel, that has led me to testify before you today.

Go is often described as being similar to chess, but it is, in the opinion of many, even more challenging. Two players face each other across a board, one with a set of white stones and the other with a set of black stones, each with a goal of controlling the most territory over the board. It is a game that requires careful deliberation and strategic thinking. The intellectual challenges of the game reveal a great deal about the player's personality and his resourcefulness under pressure. Time after time, I have played opposite a complete stranger with whom I did not share a common language, and by the game's end, we were able to develop a bond of friendship.

In December of 2000, I read an article in the American Go Journal describing an international Go tournament scheduled for January 3 through 7, 2001, in Havana, Cuba. The article stated, quote, "According to U.S. law, amateur and semi-professional sports teams are legally allowed to visit Cuba. This means that Americans can legally participate in the 5-day international tournament next January 3 through 7."

I was immediately interested in participating in this tournament, not only because of my longstanding interesting in Cuba, but also because I was intrigued that such a small, non-Asian country could maintain a Go community large enough to sponsor an international tournament. Additionally, I am nearly fluent in Spanish and welcomed the opportunity to immerse myself in a Spanish-speaking culture. And, of course, there is nothing like the challenge of an international tournament to improve one's game.

Upon reading the article, I contacted Peter Schottwell, who was mentioned in the article I read, and Roy Leard, the President of the American Go Association. Both men assured me that it would be legal for me to travel to Cuba as a representative of the American Go Association at the tournament. Relying on their assurances, I made plans to attend. The President of the American Go Association provided me with a letter designating me as a representative of the Association to carry with me on the trip.

My experiences in Cuba exceeded my expectations. My Spanish skills improved and I forged friendships with Cuban Go players and their families, people whom I otherwise would not have had

the opportunity to meet. I also had the good fortune to compete against players from a number of other foreign countries, including Italy, Venezuela, Chile, Argentina, and Brazil. During the course of my trip, I learned a great deal about these tournament players and their respective cultures. On the competition level, I also found satisfaction. I placed third in the tournament out of 29.

Without a doubt, the highlight of my trip was a visit I made to a Go academy, which is a part of the curriculum for grade school children in Cuba. A Cuban participant in the tournament was a teacher at a Go academy and he invited me and another participant from Japan to visit his academy. I was delighted to see a lively classroom full of 20 or so children between the ages of 5 and 8 who were paired off and enthusiastically playing games of Go.

During the course of the day, I observed and critiqued the children's games, provided them with advice on technique, and tried to instill them a desire to raise their skills to the point where they would be able to compete in international Go tournaments. It was already clear to me that some of the children would soon exceed their own teachers in skill.

Regrettably, Cuba is quite isolated and it lacks good books on Go technique. It also lacks access to the Internet over which Go can be played at any time of day against players from all over the world.

On the flight back to the United States on January 9, 2001, I listed Cuba as a country that I had traveled to on a U.S. Customs declaration card. Arriving at the airport in Memphis, Tennessee, I was questioned by U.S. Customs officials about my listing of Cuba on this form. I explained the purpose of my trip and provided the Customs official with the letter that designated me as a representative of the American Go Association. After I had answered all their questions, the officials thanked me for my cooperation and I made my connecting flight to Chicago.

The wonderful memories of my trip to Cuba continued to last. However, I received a letter from OFAC dated May 18, 2001, 4 months after my trip to Cuba. This letter, titled "Pre-Penalty Notice," informed me that under the Trading with the Enemies Act and Cuban Assets Control Regulations, OFAC intended to issue a claim against me for a civil penalty in the amount of $7,500. I was shocked and upset by this letter, both at the suggestion that my travel to Cuba was not authorized and by the fact that my government would impose a large fine on me when I had done nothing more than participate in an international Go tournament that had been attended by players from around the world. With assistance of counsel, I requested a hearing and my case remains unresolved.

Senators, I truly believe that people-to-people contact promoted by events like the tournament I attended is an invaluable tool for laying a common ground between differing cultures. It is through such contact that mutual respect and understanding can be based. I am strongly in favor of lifting the travel ban to Cuba so that ordinary citizens like myself can travel legally to Cuba, learn about our neighbors, and convey a positive image of Americans and their life in the United States. At the very least, as a result of my travel, there is now a group of Cuban Go players and their families who knew very little about Americans prior to January 2001 but who

now know at least one American who has shown himself to be not so different from them in the ways that really count.

The great leaps in technology of the last few decades have made the world seem like it is becoming a smaller and smaller place. There is no stopping this trend, nor do I think there should be. The events of the last year should teach us that Americans cannot afford to remain isolated from the rest of the world, nor can Americans afford to remain dismissive of other cultures. I know that I have been greatly enriched by my visit to Cuba and I strongly suspect that the same would hold true for other Americans were they to have the good fortune to make such a visit.

PREPARED STATEMENT

Respectfully, I urge Congress to end the ban on travel to Cuba through legislation. Thank you once again for this opportunity to speak to you today.

Senator DORGAN. Mr. Harriman, thank you very much.

[The statement follows:]

PREPARED STATEMENT OF JOHN HARRIMAN

Good morning, Senator Dorgan and Members of the Subcommittee. My name is John Harriman, and I am a 37-year-old software developer from Chicago, Illinois. For the past 13 years, I have been an avid player of a board game called Go, which is a centuries old game that originated in Asia and that has recently begun to gain popularity in the United States and other non-Asian countries. It was my passion for this game that led to my one and only visit to Cuba in January of 2001, to compete in an international Go tournament. And it was this travel, or rather the Treasury Department's imposition of a $7,500 civil penalty based on this travel, that has led me to testify before you today.

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My experiences in Cuba exceeded my expectations. My Spanish skills improved, and I forged friendships with Cuban Go players and their families—people whom I otherwise would not have had the opportunity to meet. I also had the good fortune to compete against players from a number of other foreign countries, including Italy,

[1] American Go Journal, Fall 2000 Volume 34, Number 3, "The Travelling Go Board—Go in the land of Capablanca."

Venezuela, Chile, Argentina, and Brazil. During the course of my trip, I learned a great deal about these tournament players and their respective cultures. On the competition level, I also found satisfaction—I placed third in the tournament out of 29.

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The wonderful memories of my trip to Cuba continue to last. However, I received a letter from the Office of Foreign Assets Control, or OFAC, dated May 18, 2001, four months after my trip to Cuba. This letter, titled a "Pre-Penalty Notice," informed me that under the Trading with the Enemy Act and the Cuban Assets Control Regulations, OFAC intended to issue a claim against me for a civil penalty in the amount of $7,500. I was shocked and upset by this letter—both at the suggestion that my travel to Cuba was not authorized, and by the fact that my government would impose a large fine on me when I had done nothing more than participate in an international Go tournament that had been attended by players from around the world. With assistance of counsel, I requested a hearing, and my case remains unresolved.

Senators, I truly believe that people-to-people contact, promoted by events like the tournament I attended, is an invaluable tool for laying a common ground between differing cultures. It is through such contact that mutual respect and understanding can be based. I am strongly in favor of lifting the travel ban to Cuba so that ordinary citizens like myself can travel legally to Cuba, learn about our neighbors, and convey a positive image of Americans and their life in the United States. At the very least, as the result of my travel, there is now a group of Cuban Go players and their families who knew very little about Americans prior to January 2001, but who now know at least one American who has shown himself to be not so different from them in the ways that really count.

The great leaps in technology of the last few decades have made the world seem like it is becoming a smaller and smaller place. There is no stopping this trend, nor do I think there should be. The events of last year should teach us that Americans cannot afford to remain isolated from the rest of the world. Nor can Americans afford to remain dismissive of other cultures. I know that I have been greatly enriched by my visit to Cuba, and I strongly suspect that the same would hold true for other Americans should they have the good fortune to make such a visit.

Respectfully, I urge the Congress to end to the ban on travel to Cuba through legislation. Thank you once again for this opportunity to speak to you today.

Senator DORGAN. Next, we will hear from Dr. John Gilderbloom of the Cuba Research and Education Programs. Dr. Gilderbloom?

STATEMENT OF JOHN I. GILDERBLOOM, Ph.D., PROFESSOR, DEPARTMENT OF URBAN AND PUBLIC AFFAIRS, COLLEGE OF BUSINESS AND PUBLIC ADMINISTRATION, UNIVERSITY OF LOUISVILLE

Mr. GILDERBLOOM. Thank you, Senator Dorgan. I am a professor at the Department of Urban and Public Affairs in the College of Business and Public Administration at the University of Louisville and I teach courses on Cuba, research methods, urban planning, historic preservation, comparative urbanism, and housing. I have

published 3 books, 21 refereed articles, 12 chapters in books, and articles in the Wall Street Journal, USA Today, and Los Angeles Times.

Outside of my university duties, I work with the Cuba Research and Education Programs, which brings several groups for professional study for planning, architecture, economic development, and sustainable communities. Participants are eligible to get continuing education credit from the American Institute of Architects, American Planning Association, and other relevant organizations. In addition, graduate students, professors, and journalists who sign up for our programs on urbanism are also allowed to go on these programs if they promise to disseminate the information as required by U.S. Treasury laws, which we follow.

More people than not cannot go on these programs. It is not open to everybody, and, in fact, over the last 9 months, we have only taken 71 persons to Cuba, three groups, including some very distinguished people who have worked in the Federal Government, the State Government, as well as some established journalists.

Our program has been featured on CNN, National Public Television. A host of newspapers, magazines, and books have lauded our Cuba program. I brief U.S. State Department officials, the United States Interests Section, where we meet regularly, and numerous Senators and their staff, and I represent Kentucky in the nonpartisan Americans for Humanitarian Trade with Cuba.

Last March, we wrote to Treasury requesting renewal of our license for another 2 years. In June, they said that we would not hear from them until December because they wanted to evaluate our program and take a closer look at it.

When we contacted them December 1, when they said they would have a decision made, they said they lost our original correspondence from March. We immediately resubmitted the information to them and we received another letter denying our license renewal and stating that we should resubmit and provide a summary of past activities and an agenda of the proposed activities. We promptly did so, but much of what we provided, of course, is included in this testimony today.

On January 31, we were told that our license application had been denied again. Treasury gave us this vague explanation that our programs do not have enough people-to-people exchanges. We think the reasons for this denial are capricious and arbitrary.

Although OFAC's stated reason for denying our license is that our programs do not have enough people-to-people contact, my Congressional representative was told by OFAC that they felt we were more of a tourist-oriented organization rather than a serious research and education program. OFAC also informed her that they objected to our website, which has over 41,000 people visiting it, with numerous Cubans also participating in it, both here and in Cuba. They also expressed a distaste for the restaurant reviews, which we provide as a service to participants because of issues of food safety and we wanted to promote small, private businesses that opened up as restaurants.

The arbitrary nature of OFAC's decision is further highlighted by the fact that one of our programs was copied nearly word for word by another organization and institution. They were granted a li-

cense 2 months previous to ours, while our program was flatly denied. In addition, a participant or student in one of my programs has adopted many of the same features from my program and had no trouble securing a license to lead groups.

Finally, in terms of people-to-people contact, we regularly brought people, against the wishes of the Cuban government, to the Catholic Church, to outreach organizations, to activists, and particularly troubling, I think, for the Cuban government was regular interests with the U.S. Interests Section. In fact, of special interest is that, in fact, the strength of our program is that the preservationists at the U.S. Treasury Department actually attended one of our programs and went in there and said they recommended the trip highly because of our strength and positive nature. It is also interesting, too, because we focus on 500 years of architecture, from pre-Columbian all the way up to the Soviet style of architecture and it gives people an idea of what housing looked like before and after the revolution.

U.S. Treasury is not alone in their discontent with our programs. As I mentioned earlier, the Cuban government was also unhappy and, in fact, was considering not allowing us to go anymore. They were concerned about articles I had posted in Planning which are attached to this testimony, as well as a forthcoming article in the Encyclopedia of 20 Century Architecture. In fact, they have been quite critical of it, and for those reasons of visiting people and organizations outside of the Cuban government and our visits regularly to the Catholic Church and to OFAC.

Unlikely many U.S.-licensed tour programs that are uncritical of Cuba, we have attempted to provide a balanced perspective with competing points of view because we want to provide the most profound, interesting, and honest educational experience. Like OFAC, the Cuban officials were upset by our website, too, but for different reasons. The Cubans did not like us promoting privately-owned businesses and enterprises like restaurants, artists, and apartments that were for rent. The Cuban government wants all participants supporting government-owned restaurants, hotels, and stores. OFAC believed our website to be promoting tourism, but we think it is more like promoting small, privately-owned businesses and, therefore, not supporting the government.

People we have taken to Cuba are professionals in respected urban fields, professors, and students. They are the ambassadors to America. They are the face that represents America. In a time when the Cuban government continually replays the worst of America, these Americans that we take are the face of America and it goes against the Cuban media development of that.

We would also like to say that our participants that come on this trip are professionals. They are not there for the sun, the rum, or the sex, but instead learn about a country that is so alien to our own.

Alvarado Sanchez, widely regarded as a leading human rights activist, has said on numerous occasions in Cuba, the more American citizens in the streets of Cuban cities, the better for the cause of a more open society. He says, "So why does the U.S. maintain travel controls?"

We have met continuously with the chief officer, both the former and current, of the United States Interests Section, who have praised our programs as being on the cutting edge. In fact, they have already contacted OFAC, concerned about our license being turned down, and they were pushed away and told, "Mind your own business. We are taking care of this."

We have done a lot of work in terms of outreach to the Cuban people and we are very proud of this. OFAC needs to follow the law and grant travel licenses to educational research organizations like ours. But it is too late for our organization. The denial of our license request has been devastating. We have had to cancel all of our future programs in March and May, and because these programs are a large source of our modest budget, we have been forced to lay off the entire staff and essentially mothball our office until we hear from Treasury. OFAC has created economic ruin for a modest operation which was to reach out in a people-to-people program. It is likely it will never recover from their unfair and unjust treatment of our organization.

PREPARED STATEMENT

Thank you for the opportunity to testify here today, and attached is a much longer testimony.

Senator DORGAN. Thank you, Dr. Gilderbloom.

[The statement follows:]

PREPARED STATEMENT OF JOHN I. GILDERBLOOM, PH.D.

In 1997, I was one of the first American planners/environmentalists to speak to Cubans on our successful economic development programs involving inner city Louisville. These programs included development of family owned homes and businesses. My presentation was a big success and got a lot of attention (please see appendix A). Since the collapse of the Soviet Union, Cuba has allowed private ownership of hundreds of different kinds of businesses. I was then asked to bring delegations of American experts to Cuba to exchange ideas. The Cubans were not interested in converting Americans to Socialism but learning how to run private businesses. This modest beginning led way to us becoming one of the most respected and acclaimed programs in Cuba.

I am a Professor in the Department of Urban and Public Affairs in the College of Business and Public Administration at the University of Louisville and teach graduate courses on Cuba, research methods, urban planning, historic preservation, comparative urbanism, and housing. Outside of my University duties, I work with Cuba Research and Education Programs to bring several groups for a professional study of planning, architecture, economic development, and sustainable communities. We focus on both the achievements and mistakes the Cubans have made in the fields we study. Participants are eligible for continuing education credit from the American Institute of Architects, American Planning Association, and other relevant organizations. In addition, graduate students, professors, and journalists also sign up for our programs and present the knowledge gained from the experience in their schoolwork, teaching, and writing. All participants are required to sign a letter stating they are professionals in these areas and, moreover, promise there is a good likelihood of professional dissemination in books, newspapers, journals, and/or professional newsletters. On our website, we give the following statement regarding who can go on our trips:

"The following persons would qualify for this program:

—A faculty or student at a higher education institution who can state that they have an established interest in attending this research and education program.

— A journalist with established record of writing and who promises to submit an article.

—If you are an architect, planner, ecologist, designer, government official, developer, environmentalist, community activist, or other related profession, you will need to write a one-page statement of established interest for attending this re-

search and education program. This is a statement explaining how you will disseminate the research and how it relates to your particular field."

Our program has been featured on CNN, national public television, and a host of newspapers, magazines, and books on Cuba. I have briefed U.S. State Department officials, the United States Interests Section, and numerous Senators and their staffs. I represent Kentucky to the non-partisan Americans for Humanitarian Trade with Cuba. Most recently, syndicated columnist Neal Peirce quoted me and cited my organization for our work in Cuba in his column. Our website (www.cubanow.org) has had over 41,000 visitors. Officials at the United States Interests Section have praised our program as representing the gold standard of programs, noting that our program is following OFAC guidelines for people to people contact, unlike many other groups. They have contacted OFAC regarding the recent denial of our license. Both the current and past Chief of the United States Interests Section have repeatedly praised our "people-to-people" educational programs as important for creating greater openness and dialogue in Cuba.

Last March, we wrote to Treasury requesting renewal of our license for another 2 years. In June 2001, they told us that a decision regarding our license would be made by December 1 of that year, and it was in the queue. In November, we wrote to Treasury officials to remind them that a decision was promised by December 1, 2001. When we contacted them in mid-December inquiring about their decision, we were told that they had lost our original correspondence from March. We immediately resubmitted information to them. We received a letter dated December 18, denying our license renewal and stating that we could resubmit and provide "A summary of past activities and an agenda for the proposed activities." We promptly did so; much of what we provided is included in this testimony. In early January, we received another letter from Treasury informing us that they had received our revision. On January 31, we were told our license application had been denied again. Treasury gave us the vague explanation that our programs did not have enough "people-to-people exchanges." We think the reasons for this denial are capricious and arbitrary. All that remains of our organization is our website and my own research on Cuba, that includes a forthcoming book—which is now in peril as well. In the past, OFAC has seemed pleased with our programs; the sudden u-turn they have taken is hard to understand since the law on travel to Cuba has not changed.

Although OFAC's stated reason for denying our license is that our programs did not have enough people-to-people contact, my congressional representative was told by OFAC that they felt we were more of a tourist oriented than a serious educational and research program. OFAC also informed her that they objected to our website; they believe it gives the impression that anyone can go on our programs (not true) and expressed distaste for the restaurant reviews we have posted as a service to participants. We plan to follow OFAC's directive and remove the restaurant guide, as well as several books to which they opposed, from our website, although we believe these requests to be petty and senseless.

The arbitrary nature of OFAC's decision is further highlighted by the fact that one of our programs was copied nearly word-for-word by another organization; they were granted a license while our program was flatly denied! In addition, a participant in one of my programs has adopted many of the same features from my program and had no trouble securing a license to lead groups. Finally, in terms or people-to-people contact, we regularly brought urbanists working outside of government to the attention of participants, including Habitat for Humanity and regular visits to the modest homes of the Cuban people.

Our organization, Cuban Research and Education Programs, is the most prominent organization providing legitimate, for-credit, professional education and research programs on Cuba for planners, architects, environmentalists, urbanists, and other related fields. Our programs have been running on a modest level for the past 5 years with wide acclaim. All participants are required to sign a form stating they are a professional in the field of urbanism and declare they have a good chance of disseminating the information they have learned to professional organizations. Very few other licensed programs make such a requirement or simply ignore it. More often than not, we say no to most people who call wanting to go on our licensed program. We will direct them to either write their own customized license or to another organization with less stringent requirements. Richard Stone of the American Institute of Architects recently wrote the following to us:

"Thank you again for the superior tour you gave—Architects would love your tour and your tour format—I collected 24.5 hours of continuing education credit—I do want to take the same tour again soon." Prominent engineer David Giuliani said in another testimonial: "Visiting Cuba with you has been the most educationally intensive period of my recent life."

U.S. Treasury Preservationist, Martin Shore AIA, who headed the office out of 1500 Pennsylvania Avenue and was a participant in our program posted the following on our website: "recommend the trip highly." Numerous graduate students from schools around the country have used their experiences on our programs to receive course credit.

Our programs are considered the best of their kind, with a focus on architecture, planning, economic development, environmentalism, and sustainability (please see Appendix B for an example of one of our lectures in Cuba). Professionals have very limited choices in terms of programs that provide continuing education credit. Our programs represent the gold standard of research and education programs, providing more opportunities for people-to-people contact than any other, including visits with activists outside of Cuban government, churches, and many places that have been ruled "out of bounds" by the Cuban government. These educational and research adventures provide a rare and unique opportunity for Americans to learn first-hand how communism works in one of the world's last bastions of Socialism. They also get to see some of the most significant historic architecture in the world, including pre-Columbian, Spanish Colonial, Art Deco, International, and the rather awful looking prefabricated Soviet/Siberian style apartment blocks—a well-rounded lesson on urban form and housing before and after the Socialist revolution.

CONFLICTS WITH THE CUBAN GOVERNMENT

The U.S. Treasury is not alone in their discontent with our programs; the Cuban government is also unhappy. The Cuban government has a similar kind of licensing authority, under which groups must find a government organization willing to sponsor them. Our permission from the Cuban government to do educational and research programs has been shaky because of our open criticism of their island country.

An article I wrote on Cuban architecture, design, and economic development in the professional journal Planning (see appendix A), while winning praise in the United States for being even handed, was roundly denounced on the internet by top Cuban officials. One official accused me of being part of the Miami exiled Cuban "mafia". Another accused me of working for the CIA! I was later informed that the top planning school in Cuba was barred from having any official contact with me. We were forced to find a new sponsor-Cuban Institute for Friendship with Americans-with whom we remained affiliated for 2 years. They, too, were bothered by my willingness to criticize Cuba for its problems with planning, economic development, and architecture. The Institute was also upset because I insisted on taking participants to places frowned upon by the Cuban government, such as the U.S. Interests Section, a Catholic Church specializing in outreach efforts for people with AIDS and drug problems, and a shanty town. They expressed disapproval that I arranged meetings with former urban planning and housing experts that no longer work with the Cuban government. We suspect that the Cubans were strongly considering not giving us the needed sponsorship for next year—but it looks like OFAC has taken care of that task for them. Unlike many licensed U.S. tour programs that are uncritical of Cuba, we have attempted to provide a balanced perspective with competing points of view—because we want to provide the most profound, interesting, and honest educational experience for the professionals who sign up with us. The rave testimonials on our website says it all.

Like OFAC, the Cuban officials were upset with our website—but for different reasons. The Cubans did not like us promoting privately owned businesses and enterprises like restaurants, artists, and apartments. The Cuban government wants our participants supporting government owned restaurants, hotels, and stores only. OFAC believed our website to be promoting tourism, but we think of it as promoting small privately owned businesses—and therefore not supporting the Cuban government.

CONCLUSION

The Cold War is over. Today, thousands of Americans now visit China and Russia. To a certain degree, these visits or exchanges have caused China to move toward a third stream of economic development embracing some forms of capitalism. The dramatic fall of Communist Russia is also related to cultural exchanges with the West—rock n' roll, blue jeans, and McDonald's brought about structural changes greater than any military might. The people we have taken to Cuba are professionals in respected urban fields, professors, students, and journalists, and represent the best of America. They are the face of America that went against a Cuban media creation of racist, greedy, and violent Americans. They did not come to Cuba for sun, rum, and sex, but instead to learn about a country that is so alien to our

own. Our people-to-people programs have helped create new bridges of understanding, hope, and peace between the people of Cuba and the United States. Elizardo Sanchez, widely regarded as the leading human rights activists, has said on numerous occasions: "The more American citizens in the streets of Cuban cities, the better for the cause of a more open society. So why does the U.S. maintain travel controls?"

With only limited media outlets that are controlled by the Cuban government, Cubans think that incidents like the shooting at Columbine occur nearly every week in the United States. Many Cubans believe that Pulp Fiction—played over and over in Cuba—is an accurate portrayal of our state of race relations. Both the former and current Chief Officer of the United States Interests Section have praised our programs as being one of the best in creating greater understanding and goodwill between the people of Cuba and the United States. We believe the embargo against food, health, and travel restrictions need to be completely lifted; at the very minimum, however, OFAC needs to follow the law and grant travel licenses to educational and research organizations like ours. Groups like ours are a small step toward helping to improve relations between our two countries.

For our organization, the denial of our license request has been devastating. We have had to cancel programs scheduled for both March and May. Because these programs are a large source of income for our small organization, we have been forced to lay off the entire staff and essentially mothball our office until we hear from Treasury. OFAC has created economic ruin for our modest operation. It is likely we will never recover from their unfair and unjust treatment of our organization. Thank you for the opportunity to testify here today. Attached is more information about our programs for the written record.

SUMMARY OF OUR ACTIVITIES

Travel and Educational Exchange

By any measure, Cuban Research and Education programs provides the highest quality educational programs in the areas of architecture, planning, preservation, sustainable development, and environmental development. We have at least one or two American professors that lead each of our licensed programs, we meet with nongovernmental groups and individuals, and we spend more time on substantive educational activities than any other programs. Some of the folks that currently lead newly licensed programs were participants of mine in the past and attempt to essentially duplicate our previous programs. Some of the newly licensed programs focus on urban and design issues are simply lacking the kind of expertise and breath that we provide.

In 1997, I attended the Fourth Biennial de Architechtura del Caribe, along with hundreds of fellow academics, planners, and architects. I was the only American present at the conference. At the conference, I made a presentation that highlighted new urbanism and my own experiences with sustainable development. I received requests for encore lectures. The eagerness of the Cuban people to share information, and their desire for quality interaction on a professional level, led to the inception of my Cuban Research and Education programs. In 1997, I organized a group of Americans to attend the International Conference on Shelter and Revitalization of Old and Historic Urban Centers, held in March of that year. The group was comprised of diverse individuals, including planners, architects, builders, and sociologists. The research and education programs have been featured in nationally syndicated newspaper columns, and received the 1999 "Insider Award" for excellence in educational travel from Travel Holiday, a publication with more than 625,000 readers. The book, Time Out: Havana and the Best of Cuba, called us the "perhaps the best educational option" for travel to Cuba.

FOSTERING PEOPLE-TO-PEOPLE EDUCATIONAL, PROFESSIONAL, AND ORGANIZATIONAL EXCHANGE

Many of the contacts for our research and education programs are recognized internationally. Ruben Bancroft, Ph.D., Dean of the School of Architecture at the University of Havana, and an internationally recognized architect, has been instrumental in forging a strong relationship and providing program support. The research and education programs resulted in Dr. Bancroft visiting the United States twice and giving lectures on the great need to preserve Cuba's architectural history through historic preservation. Mr. Sergio Garcia Gutierrez has been an important resource for the programs. President of the Union of Architects and Engineers, an organization with more than 10,000 members, Mr. Gutierrez awarded me with two certificates to recognize the contribution the programs have made toward providing an information exchange between Cubans and Americans. I was also awarded a "Di-

ploma" by the Dean of Architecture at the University of Havana. The programs have also enjoyed the support and participation of Eusebio Leal, Havana Town Historian, Dr. Mario Cabello; the Cuban Minister of Housing, Mr. Gregorio Alvarez Valdes; Director of International Relations, Ms. Isabella Rigol; former Head of Conservation of Old Havana, Arg. Salvador Gomila Gonzales; the Deputy Chairman of the National Housing Institute; and Mr. Jose Choy, a leading architect in Cuba. Participants also meet with leaders of the Committee for the Defense of the Revolution and Cuban Institute for Friendship. Some of these individuals work outside of Cuban government, and we have also worked with several other non-government organizations in Cuba including Habitat for Humanity. I have discussed planning and preservation on Cuban television several times.

HUMANITARIAN OUTREACH

Our Cuban research and education programs have institutionalized the donation of medical supplies as an organizational goal. Cuban hospitals and clinics suffer from a constant shortage of medical supplies, inadequate facilities, and antiquated equipment. Each individual traveling to Cuba is allowed to bring a maximum of 22 pounds of medicine to donate. In the beginning, individuals were asked to acquire their own medical supplies. I quickly realized that this method would not produce the maximum amount of medical donations to Cuba. I sought and fostered a relationship with Supplies Over Seas (SOS), a local foundation whose mission is to provide free medical supplies and assistance wherever it is needed. I am now an active SOS board member. Currently, the research and education programs acquire and distribute the medical supplies with assistance from SOS.

The programs have been responsible for delivering approximately 10,000 pounds of medical supplies to a hospitals and clinics throughout Cuba. These medical supplies have an estimated value of more than $200,000, under the assumption that each participant brought 10 pounds of medicine each.

Recently, the programs made a large donation of clothing to a private church that works with Cuban AIDS patients after receiving information from the Cuban AIDS project. We believe that assisting those in need is the most basic form of building relationships and community between people and Nations.

INFORMATION DISSEMINATION

As an active community member, I have had the opportunity to discuss the importance of improved U.S.-Cuba relations and the research and education programs with national leaders. On the local level, I regularly correspond with Congresswoman Anne Northup (3rd District, R-Ky) as a way to disseminate information and heighten awareness about the potential for positive relations with Cuba. I have also met with United States Senator Mitch McConnell (R-Ky) several times and had a lengthy personal conversation with him regarding Cuba. I have met with four other U.S. Senators to discuss Cuba—Senators Kerry, Chafee, Leahu, and Rockefeller. Most recently, I participated in a day long seminar on the economic impacts of the embargo with Congressional leaders and staff. At a national level, I spoke to former Secretary of State Madeline Albright during her visit to Louisville in spring 1998. I addressed policy issues regarding Cuba at an open forum discussion hosted by the University of Louisville. Internationally, I have arranged meetings between research and education participants and the United States Interest Section in Havana, Cuba. These meetings have provided an informal setting for individuals to question the status of U.S.-Cuba policy and progress regarding free travel and professional exchange. Michael Kozak, Former Chief of the U.S. Interest Section, complimented me for the variety of officials both within and outside the government I have met with. Mr. Kozak stated that I had better and friendlier contacts than does the entire U.S. Interest Section.

COMMUNITY OUTREACH

Our organization has helped to foster relationships through membership, advertisement, and listserv postings with important international organizations that have an established interest in the Cuban research and education programs. These organizations include the National Trust for Historic Preservation, Society of Architectural Historians, Urban and Community Sociology Section, Cuban Committee for Democracy, Americans for Humanitarian Trade with Cuba, H-Urban, New Urbanist, University and Community Partnerships, American Planning Association, and Progressive Planners Network.

As a way to provide the maximum amount of people with up-to-date information on research and education programs to Cuba, I have developed an extensive web site, www.cubanow.org. This web site provides a constant stream of new information

through slide presentations, essays, video presentations, and details about travel to Cuba, and numerous links to relevant sites that will allow individuals to better understand U.S.-Cuba policy and travel. The site has received more than 41,000 hits from 52 countries. The website now averages about 150 hits a week. The number of hits have doubled in the past year. The website is very popular among Cuban architects, planners, and preservationists and government officials. This is the only website in the world that provides a voice to the Cuban design community. These community outreach efforts have achieved participation of a wide variety of individuals from interrelated fields, including participants from the U.S. Treasury Department, Council on Foreign Relations, U.S. Department of Housing and Urban Development, and the Federal Aviation Administration has traveled to Cuba with our organization as a direct result of these outreach efforts.

I was also invited to speak at the Cuban National Heritage Symposium at the Institute San Carlos in Key West, Florida, by the preservation group Cuban National Heritage. I gave a slide show presentation to illustrate the great need in Cuba for preservation efforts. At this symposium, I interacted with a wide range of individuals, including exile groups that offered another perspective on the state of U.S.-Cuban relations.

SPEAKING EVENTS

The Cuban Research and Education Program (Cubanow.org) promotes the people-to-people public policy initiative to better U.S.-Cuban relations through direct interaction between U.S. citizens and Cubans. Our organization has made nearly 30 policy presentations to top Cuban and United States officials in order to promote positive social change at a grassroots level. Among the organizations for which we gave presentations were the U.S. Treasury Department, National Security Council, and State Department. Our organization has been invited to speak at prominent universities such as MIT, Columbia, New York University, University of Southern California, University of California at Santa Barbara, Museum of Architecture in Southern California, National Building Museum in Washington D.C., New School of Architecture in San Diego, American Sociological Annual Conference, Skirball Center in Los Angeles, University of Cincinnati, University of Louisville, Parliamentarians National Conference, Professional Speakers Group, Rotary Club, and Ohio State University. I was recently the keynote speaker in Washington D.C. at the Restoration and Renovation Conference before 6,000 participants. I feel that education and freedom go hand-in-hand and that our programs generate attention in some of the most basic and important public policy arenas. Our organization also feels that these speaking events are the best arenas to dispel common misconceptions about US-Cuban public policy and to encourage more research into public policy issues.

BIOGRAPHICAL SKETCH OF JOHN I. GILDERBLOOM, PH.D.

John I. Gilderbloom, Ph.D., Executive Director of the Cuban Research and Education Programs, is a professor in the University of Louisville's Department of Urban and Public Affairs graduate program in the College of Business and Public Administration and the Director of the Center for Sustainable Urban Neighborhoods (www.louisville.edu/org/sun). He teaches courses on Cuba, Historic Preservation, Housing, Urban Planning, and Revitalizing Inner Cities. Dr. Gilderbloom has won two "teacher of the year" awards and the Professional Speakers Bureau now represents his popular lectures on Cuba. He has been profiled in the New York Times, Atlanta Constitution Journal, and Planning Magazine. Dr. Gilderbloom has written articles on a variety of public policy issues for 22 academic journals and 18 chapters in books; he has also written two books. He has written articles in the Wall Street Journal, Washington Post, USA Today Magazine, and the Los Angeles Times. Most recently, Dr. Gilderbloom served as a technical advisor for National Geographic's recent special issue on Old Havana. He is currently writing a book on Cuba and has published articles on Cuba recently in Planning Magazine and the Encyclopedia of 20th Century Architecture. Dr. Gilderbloom has been to Cuba approximately 25 times in the past five years and is internationally recognized. He is a member of Americans for Humanitarian Trade with Cuba Board of Directors, where he sometimes volunteers as a spokesman. Dr. Gilderbloom recently earned an honorary diploma, along with several other honors, from Cuba's Union of National Architects and Engineers. He has provided testimony to Congress on several occasions concerning Hispanics and housing.

Special note: My thanks to Teressa Jackson, Neal Pearce, Gayle Kimball and Richard Louv for reading and editing this.

Senator DORGAN. We will now go to Nancy Chang, of the Center for Constitutional Rights. Ms. Chang.

STATEMENT OF NANCY CHANG, CENTER FOR CONSTITUTIONAL RIGHTS

Ms. CHANG. Senator Dorgan, thank you for providing the Center for Constitutional Rights with this opportunity to discuss the pressing need for legislation ending governmental restrictions on travel to Cuba.

Travel to Cuba to engage in tourist activities, which by statute can never be licensed, and travel to Cuba without a license to engage in those limited activities for which the law permits the grant of a license constitute violations of the Cuban Assets Control Regulations and the Trading with the Enemy Act of 1917. Only travelers who are fully hosted while in Cuba and successfully avoid spending so much as a penny of their own money on prohibited travel-related transactions are exempted from these restrictions.

Each violation of these travel restrictions can expose the traveler to a criminal conviction, punishable by the fine of up to $100,000 and by imprisonment for a term of up to 10 years. In addition, each violation can expose the traveler to civil enforcement by the Department of the Treasury's Office of Foreign Assets Control, which is authorized to assess a penalty of up to $55,000.

The severity of the restrictions on travel to Cuba interferes with and effectively chills the exercise of two fundamental rights protected by the United States Constitution. First, the restrictions limit our freedom to travel, which is part of the liberty of which a citizen cannot be deprived without due process of law under the Fifth Amendment. The Supreme Court has explained that this freedom of movement is the very essence of our free society, setting us apart. Like the right of assembly and the right of association, it makes all other rights meaningful—knowing, studying, arguing, exploring, conversing, observing, and even thinking. Once the right to travel is curtailed, all other rights suffer, just as when curfew or home detention is placed on a person.

Second, the restrictions limit our rights under the First Amendment to express our views, to hear the speech of others, to gather information, and to associate with others, rights which are essential to a democratic society. During the Cold War, the Supreme Court twice upheld governmental restrictions on travel to Cuba, finding them to be justified by the weightiest considerations of national security. The geopolitical landscape has changed significantly since the Supreme Court decided these cases and the Cuban Assets Control Regulations, nevertheless, continue to infringe on our fundamental rights.

Out of concern that the OFAC enforcement of the restrictions was unfairly targeting Americans for punishment that they did not deserve, in 1998, the Center for Constitutional Rights established its Cuban Travel Project. During the 4 years it has been in operation, it has advised thousands of individuals and dozens of organizations from across the United States on the laws and regulations governing travel to Cuba. A bilingual pamphlet published by the Center, "Advice for Travelers to Cuba," provides a user-friendly introduction to this arcane area of the law and is in wide circulation.

Currently, the Center represents more than 400 individuals who have been targeted for OFAC enforcement actions. Each client has received from OFAC a requirement to furnish information, demanding a written response to a set of questions about his or her travel activities, and/or a pre-penalty notice alleging that he or she traveled to Cuba in violation of the restrictions. In the case of the Center's 246 clients who have received a pre-penalty notice, OFAC has demanded a civil penalty that generally ranges from $7,500 to $17,500.

The Center's clients represent a cross-section of America at its very best. Included among its ranks are doctors, lawyers, educators from the elementary school level to the university level, students in high school, college, and graduate school, journalists, writers, artists, dancers, film makers, urban planners, public health workers, social workers, law enforcement officers, civil servants, entrepreneurs, computer experts, and engineers. They range in their age from their teens to their 80s and they are spread across 35 States and the District of Columbia.

While their reasons for traveling to Cuba are varied, none have engaged in activities that would, at least under any fair and rational system of justice, be considered grounds for imposing the criminal and civil penalties called for in the Cuban Assets Control Regulations and the Trading with the Enemy Act. The Center's clients provide a firm basis for understanding the reasons why so many Americans travel to Cuba without first obtaining a license to do so from OFAC.

First, most Americans are not aware of and do not understand the complex laws and regulations that govern such travel, and as a result, incorrectly believe their travel to be legal. The regulations are obscure, replete with provisions that are lacking in clarity, and furthermore, the restrictions run counter to the basic values of an open society. Indeed, travel to socialist States, including the former Soviet Union, the People's Republic of China, Vietnam, and North Korea have long been and continue to be permitted, with the sole exception of travel to Cuba.

Perhaps it is for these reasons that Americans are quick to believe advertisements falsely claiming that Americans may travel to Cuba lawfully as long as they pay for their trip in advance to a travel agency in a third country and spend no cash in Cuba.

Ironically, those who honestly report their travel to the Customs Service on their return to the United States are the ones who are most likely to become the subject of an OFAC enforcement action, while those who deliberately set out to violate the rules are adept at evading detection, and, it seems, nearly always succeed in their mission. In other words, OFAC enforcement is directed at the least culpable travelers, those who do not understand the travel regulations and believe themselves to be in compliance with them and are truthful with the Customs Service.

Second, Americans who are intent on visiting Cuba as tourists are left no option but to violate the Cuban Assets Control Regulations and expose themselves to the harsh penalties. OFAC is barred by statute from granting a license for travel to engage in any tourist activities.

Third, Americans who apply for a specific license to travel to Cuba in order to engage in one of the limited activities for which licenses may be granted have consistently encountered roadblocks that prevent them from obtaining a license on a timely basis. From all outward appearances, OFAC is engaged in a deliberate strategy of discouraging the filing of license applications and of constructively denying those applications that are filed through agency inaction and delay.

OFAC has failed to publish any rules or procedures specifying what information a successful license application must provide, much less what standards are applied in reviewing these applications. The absence of uniform written standards, coupled with the absence of any requirement that OFAC demonstrate to Congress or to the public that it is exercising its discretion in a fair and evenhanded manner promotes the inconsistent and irrational treatment of applications that we have witnessed.

Fourth, Americans who travel on a general license or whose travel is fully hosted are not required to apply for a license in advance of their trip from OFAC and, therefore, lack documentation that their travel is lawful. On their return to the United States, these individuals are frequently subjected to harassment, even detention and confiscation of goods purchased in Cuba by untrained Customs officials who rigidly adhere to the false believe that travel to Cuba is illegal unless the traveler is able to produce a copy of a specific license from OFAC authorizing this travel. Some of these individuals have even been subjected by OFAC to enforcement actions.

Enforcement of the restrictions on travel to Cuba are being stepped up at a time when government resources are urgently needed to fight terrorism. In July 2001, in response to widespread complaints of a Bush administration crackdown on Americans traveling to Cuba, a spokesperson for the Department of Treasury finally acknowledged that a higher incidence of penalty cases is being issued. The Department of Treasury reported that while OFAC had issued only 188 enforcement letters in all of 2000, it had issued 766 such letters in 2001.

The Center was recently informed by OFAC officials that administrative law judges will soon be conducting the hearings that have been requested by individuals who have been charged with violating the regulations. During the 10 years since the Cuban Democracy Act of 1992, the agency has been required to provide individuals with an administrative law judge hearing upon request. However, since that time, the Department of Treasury has not had any judges on staff. As of December 2001, the backlog of requested hearings was reported to be 357.

OFAC's devotion of additional resources through the hiring of administrative law judges to enforce the Cuban Assets Control Regulations at a time when it has also been assigned the serious responsibility for tracing and blocking assets of terrorists responsible for the attacks of September 11 is profoundly troubling.

Senator DORGAN. Ms. Chang, I would like you to summarize the remainder of your statement, if you would.

Ms. CHANG. Certainly. Neither the judiciary nor the executive is likely to bring about the end to the current restrictions on travel to Cuba. We are here to ask that Congress enact legislation that

terminates these restrictions and that explicitly repeals all existing statutory authorization for such restrictions.

This year marks the 40 anniversary of the Cuban Missile Crisis. Congress should seize this moment and take the first critical step towards mending the Cold War-era fences that separate us from our close neighbors. The restrictions on travel to Cuba have outlived their purpose. Moreover, their senseless, the arbitrary and unfair manner in which they have been applied only serve to breed contempt and disrespect for the laws of this Nation. Their repeal by legislation is long overdue.

PREPARED STATEMENT

Thank you once again for providing the Center for Constitutional Rights with this opportunity to address the subcommittee on these important issues, and I would request that my full written statement be included in the record of this hearing.

Senator DORGAN. Without objection, the full statement will be a part of the record.

[The statement follows:]

PREPARED STATEMENT OF NANCY CHANG

Senator Dorgan and Members of the Subcommittee, thank you for providing the Center for Constitutional Rights with this opportunity to discuss the pressing need for legislation ending governmental restrictions on travel to Cuba. First, I will address how these restrictions undermine our civil liberties without enhancing our national security. Second, I will address how enforcement of the restrictions by the Department of the Treasury unfairly targets Americans for punishment that they do not deserve. Third, I will address how these enforcement efforts are being stepped up at a time when government resources are urgently needed to fight terrorism. Finally, I will discuss why the restrictions will remain in place unless and until Congress enacts legislation to terminate them.

THE CURRENT RESTRICTIONS ON TRAVEL TO CUBA UNDERMINE OUR CIVIL LIBERTIES WITHOUT ENHANCING OUR NATIONAL SECURITY

Travel to Cuba to engage in tourist activities, which, by statute, can never be licensed,[1] and travel to Cuba without a license to engage in those limited activities for which the law permits the grant of a license,[2] constitute violations of the Cuban Assets Control Regulations[3] and the Trading with the Enemy Act of 1917.[4] Only travelers who are fully hosted while in Cuba and successfully avoid spending so much as a single penny of their own money on prohibited travel-related transactions, are exempted from these restrictions.[5] Each violation of these travel restrictions can expose the traveler to a criminal conviction punishable by a fine of up to $100,000 and by imprisonment for a term of up to 10 years.[6] In addition, each violation can expose the traveler to civil enforcement action by the Department of the Treasury's Office of Foreign Assets Control (OFAC), which is authorized to assess a penalty of up to $55,000.[7]

The severity of the restrictions on travel to Cuba, coupled with the draconian criminal and civil penalties that may be imposed upon their violation, interferes

[1] See Agricultural Rural Development, Food and Drug Administration, and Related Agencies Programs for fiscal year 2001, § 910(b), amending the Trade Sanctions Reform and Export Enhancement Act at 22 U.S.C. § 7209(b).

[2] Id. See also 31 C.F.R. §§ 515.560(a)(1)–(12) (authorizing licensed travel to Cuba under tightly prescribed conditions).

[3] 31 C.F.R. Part 515.

[4] 50 U.S.C. Appendix §§ 1 et seq. The restrictions on travel to Cuba are also authorized by the Cuban Democracy Act of 1982, 22 U.S.C. §§ 6001 *et seq*., the Cuban Liberty and Democratic Solidarity Act of 1996 (Helms-Burton Act), 22 U.S.C. §§ 6021 *et seq*., and the Trade Sanctions Reform and Export Enhancement Act, 22 U.S.C. § 7209.

[5] See 31 C.F.R. § 515.420.

[6] 31 C.F.R. § 500.701(a)(1).

[7] 31 C.F.R. § 500.701(a)(3).

with, and effectively chills, the exercise of two fundamental rights guaranteed by the United States Constitution.

First, the restrictions limit our freedom to travel, which is "a part of the liberty of which [a] citizen cannot be deprived without the due process of law under the Fifth Amendment."[8] The Supreme Court has explained that:

This freedom of movement is the very essence of our free society, setting us apart. Like the right of assembly and the right of association, it often makes all other rights meaningful—knowing, studying, arguing, exploring, conversing, observing and even thinking. Once the right to travel is curtailed, all other rights suffer, just as when curfew or home detention is placed on a person.[9]

Second, the restrictions limit rights under the First Amendment to express our views, hear the speech of others, gather information, and associate with others—rights that are essential in a democratic society. As Justice William Douglas astutely observed:

The right to know, to converse with others, to consult with them, to observe social, physical, political and other phenomena abroad as well as at home gives meaning and substance to freedom of expression and freedom of the press. Without those contacts First Amendment rights suffer.[10]

Government regulations are not permitted to infringe upon fundamental rights unless they are necessary in order to achieve a compelling governmental objective and are narrowly tailored to accomplish that objective. In a suit filed just two months after the Cuban Missile Crisis of 1962, the Supreme Court was quick to uphold governmental restrictions on travel to Cuba, finding them to be justified by the "weightiest considerations of national security."[11] Two decades later, in 1984, a somewhat more restrained Supreme Court again upheld such restrictionsEby accepting at face value the Department of State's opinion that the political, economic, and military backing of Cuba by the Soviet Union and Cuba's military activities in the Western Hemisphere continued to sustain the restrictions.[12]

The geopolitical landscape has changed significantly since the Supreme Court decided these two cases. The collapse of the Soviet bloc more than a decade ago marked the end of the Cold War and the halt of Soviet subsidies to Cuba. In the late 1990's, the Department of Defense, Central Intelligence Agency, Department of State, and National Security Agency finally acknowledged what had been obvious for quite some time—that the tiny island nation of Cuba does not pose a realistic threat to the national security of the United States or the Western hemisphere.[13]

Yet the Cuban Assets Control Regulations continue to infringe on our fundamental rights, notwithstanding the fact that the government can no longer establish that they are necessary in order to achieve a compelling governmental objective, much less that they are narrowly tailored to accomplish such an objective. These regulations illustrate a fatal flaw in the Trading with the Enemy Act—a statute that four Justices of the Supreme Court have criticized for serving as a "one-way ratchet to enhance greatly the President's discretionary authority over foreign policy" and to cling to that authority long after the national emergency that served as the basis for its grant has ended.[14]

ENFORCEMENT OF THE RESTRICTIONS ON TRAVEL TO CUBA BY THE DEPARTMENT OF THE TREASURY UNFAIRLY TARGETS AMERICANS FOR PUNISHMENT THAT THEY DO NOT DESERVE

In 1998, the Center for Constitutional Rights established its Cuba Travel Project in order to educate the public about the embargo and to provide legal representation to individuals and organizations subject to OFAC enforcement actions under the Cuban Assets Control Regulations.[15] During the four years that the Cuba Travel Project has been in operation, the Center has advised thousands of individuals and

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[8] *Kent* v. *Dulles*, 357 U.S. 116, 125 (1958).

[9] *Aptheker* v. *Secretary of State*, 378 U.S. 500, 520 (1964) (Douglas, J., concurring).

[10] *Zemel* v. *Rusk*, 381 U.S. 1, 24 (1965) (Douglas, J., dissenting).

[11] Id. at 16.

[12] *Regan* v. *Wald,* 468 U.S. 222, 243 (1984).

[13] *See* Defense Intelligence Agency, Central Intelligence Agency, and Department of State Bureau of Intelligence and Research, the National Security Agency, and the United States Southern Command Joint Intelligence Center, "The Cuban Threat to U.S. National Security," November 18, 1997 <http://www.defenselink.mil/pubs/cubarpt.htm>; Dana Priest, "Cuba Poses 'Negligible' Threat, Report Says," *The Washington Post,* May 7, 1998, at p.A8.

[14] *Regan* v. *Wald,* 468 U.S. at 245.

[15] The Coordinator of the Center for Constitutional Rights' Cuba Travel Project is Anna Liza Gavieres. The attorneys associated with the Cuba Travel Project currently include William Goodman, Michael Ratner, Robert Bloom, Anthony DiCaprio, Margie Ratner, John Speyer, Jaykumar Menon, Shayana Kadidal, and myself.

dozens of organizations from all across the United States on the laws and regulations governing travel to Cuba. A bilingual pamphlet published by the Center, Advice for Travelers to Cuba, provides a user-friendly introduction to this arcane area of the law and is in wide circulation.

Currently, the Center represents more than 400 individuals who have been targeted for OFAC enforcement actions under the Cuban Assets Control Regulations. Each client has received from OFAC a "Requirement to Furnish Information" demanding a written response to a set of questions about his or her travel activities and/or a "Pre-Penalty Notice" alleging that he or she traveled to Cuba in violation of the regulations. In the case of the Center's 246 clients who have received a Pre-Penalty Notice, OFAC has demanded a civil penalty that generally ranges from $7,500 to $17,500 per person.

The Center's clients represent a cross-section of America at its very best. Included among their ranks are doctors, lawyers, educators from the elementary school level to the university level, students in high school, college and graduate school, journalists, writers, artists, dancers, film makers, urban planners, public health workers, social workers, law enforcement officers, civil servants, entrepreneurs, computer experts, and engineers. They range in age from their teens to their 80's, and they are spread across 35 states and the District of Columbia.

While their reasons for traveling to Cuba are varied, none have engaged in activities that would—at least under any fair and rational system of justice—be considered grounds for imposing the criminal and civil penalties called for in the Cuban Assets Control Regulations and the Trading with the Enemy Act. Some clients traveled in order to deliver humanitarian aid to the Cubans and to donate their time and professional services in Cuban hospitals and schools. Some clients traveled in order to spend time with their Cuban relatives, friends, and co-religionists, to visit the grave sites of their relatives, and to visit their former military stations on the island. Some clients traveled in order to study the Spanish language, to learn about Cuba, its history, and its people, and to write books and articles describing their findings. Some clients traveled in order to attend professional meetings, sporting events, and cultural events. Some clients traveled in order to study Cuba's internationally acclaimed programs in public health, sustainable agriculture, and energy conservation. Some clients traveled in order to study its political system and to meet with its proponents and opponents. And some clients traveled in order to experience the beauty of the Cuban beaches and countryside, sail, swim, fish, scuba dive, bicycle, birdwatch, and tour the sights.

Despite their many differences, the Center's clients share an independence of thought, a determination to experience foreign cultures firsthand, and a belief that ties of friendship between people living in countries whose governments are at odds can promote peace between their nations. They are also united in their desire to export their enthusiasm for all that is positive about life in United States and to share with their fellow Americans the best of what Cuba has to offer.

The Center's clients represent only an infinitesimal fraction of the tens of thousands of Americans who have traveled to Cuba in violation of the travel restrictions.[16] However, the Center's clients represent a substantial percentage of the individuals against whom OFAC has brought enforcement actions.[17] Thus, the overwhelming majority of travelers who violate the travel restrictions are not known to OFAC; in the alternative, they are known to OFAC, but OFAC has chosen not to pursue them. Ironically, those who honestly report their travel to Cuba to the Customs Service on their return to the United States are the ones who are most likely to become the subject of an OFAC enforcement action, while those who are adept at evading detection nearly always succeed in their mission. In other words, OFAC enforcement is directed at the least culpable travelers—those who do not under-

[16] The United States-Cuba Trade and Economic Council has estimated that 176,000 U.S. citizens visited Cuba in 2000, of whom approximately 22,000 of whom traveled in violation of the travel restrictions, approximately 124,000 were Cuban Americans who are allowed one trip per year to visit close relatives in circumstances that demonstrate humanitarian need, and approximately 30,000 of whom made visits authorized by OFAC. See Kevin Sullivan, "Americans Defy Cuba Embargo," *The Washington Post,* October 13, 2001. On the other hand, *The New York Times* has estimated that 40,000 to 50,000 Americans visited Cuba illegally in 2000. See Frank Bruni, "Bush Administration Showing Willingness to Enforce Law on Visiting Cuba," *The New York Times,* August 5, 2001.

[17] The Center currently represents approximately 246 clients who have requested an Administrative Law Judge hearing. Given OFAC's statement in September 2001 that it has a backlog of 357 hearing requests, it is safe to assume that the Center's clients constitute a large percentage of OFAC's enforcement cases. *See infra* Notes 25 and 26 and accompanying text.

stand the travel restrictions, believe themselves to be in compliance with them, and are truthful with the Customs Service.

The Center's clients provide a firm basis for understanding the reasons why so many Americans travel to Cuba without first obtaining a license to do so from OFAC. First, most Americans are not aware of, or do not understand, the complex laws and regulations that govern such travel and, as a result, incorrectly believe their travel to be legal. The Cuban Assets Control Regulations are obscure and replete with provisions that are lacking in clarity. Furthermore, restrictions on travel run counter to the values of an open society. The freedom to travel is "a part of our heritage" and "basic in our scheme of values."[18] And the First Amendment not only protects, but encourages, Americans to engage in a free exchange of ideas and to form their own opinions on matters of public concern. Indeed, travel to socialist states, including the former Soviet Union, the People's Republic of China, Vietnam, and North Korea, has long been, and continues to be, permitted—with the sole exception of travel to Cuba. Perhaps it is for these reasons that Americans are quick to believe advertisements falsely claiming that Americans may travel to Cuba lawfully as long as they pay for their trip in advance to a travel agency in a third country and spend no cash while in Cuba.

Second, Americans who are intent on visiting Cuba as tourists are left with no option but to violate the Cuban Assets Control Regulations and to expose themselves to the imposition of harsh criminal and civil penalties. OFAC is barred by statute from granting a license for travel in Cuba to engage in tourist activities.[19]

Third, Americans who apply for a specific license to travel to Cuba in order to engage in one of the limited activities for which licenses may be granted under the Cuban Assets Control Regulations have consistently encountered roadblocks that prevent them from obtaining a license on a timely basis. From all outward appearances, OFAC is engaged in a deliberate strategy of discouraging the filing of license applications, and of constructively denying those applications that are filed through agency inaction and delay. OFAC has failed to publish any rules or procedures specifying what information a successful license application must provide, much less what standards are applied in reviewing applications. The absence of uniform written standards, coupled with the absence of any requirement that OFAC demonstrate to Congress and the public that it is exercising its discretion in a fair and even-handed manner, promotes the inconsistent and irrational treatment of applications that we have witnessed.[20]

To complicate matters further, OFAC routinely fails to process applications in a timely manner, a practice that is unacceptable given the substantial commitments of time and money required of travelers in advance of an international trip. Those familiar with the application process have learned that they must conduct a steady and persistent campaign of follow-up telephone calls and faxes to OFAC in order to stand even a chance of obtaining a license in advance of a trip's scheduled departure date. Furthermore, those applicants who are fortunate enough to receive specific licenses are now being saddled with burdensome additional documentation requirements.

Fourth, Americans who qualify for travel on a general license, or whose travel is fully hosted, are not required to apply for a license and, as a result, lack documentation from OFAC establishing that their travel to Cuba was lawful. On their return to the United States, these individuals are frequently subjected to harassment, detention, and confiscation of goods purchased in Cuba by untrained Customs officials who rigidly adhere to the false belief that travel to Cuba is illegal unless the traveler is able to produce a copy of a specific license from OFAC authorizing the travel. Some of these individuals have even been subjected by OFAC to enforcement actions.

Furthermore, the Center's clients provide a firm basis for understanding the hardships that travelers to Cuba endure—first at the hands of Customs officials, and later at the hands of OFAC—when our government suspects them of violating the Cuban Assets Control Regulations.

With disturbing frequency, the Center's clients have reported that Customs agents were verbally abusive to them upon their return from Cuba. Customs agents have screamed directly into their faces, accused them of being criminals, interro-

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[18] *Kent* v. *Dulles,* 357 U.S. at 126.

[19] *See supra* Note 1. A number of the Center's elderly clients have spoken with great emotion of their determination to visit Cuba while they still retain the physical ability to endure such a trip and the mental ability to appreciate the experience. Some of these clients have ties to the island nation dating back to its pre-revolutionary days.

[20] *See, e.g.,* "OFAC Travel License Survey Responses," Fund for Reconciliation and Development (February 8, 2002).

gated them in a belligerent and intimidating manner, dumped the contents of their suitcases and bags onto the floor, detained them for periods as long as six hours, and coerced them into submitting written statements about their trips by threatening to keep them in detention until such a statement was submitted. Travelers' requests to speak to their attorneys have been routinely discouraged and even ignored. Customs agents have often caused travelers to miss their connecting flights, sometimes forcing them to spend the night at the airport waiting for another flight.

In addition, the Customs Service appears to have recently initiated a practice of stationing inspectors in Canadian airports to surveil Americans as they plane and deplane flights between Cuba and Canada. A client of the Center received a Requirement to Furnish Information last year that was eerily reminiscent of the warning in George Orwell's novel, 1984, "Big Brother is watching." The notice advised her that she had been observed by Customs inspectors when her Cubana Airlines flight arrived in Montreal. To its credit, the Canadian government has voiced concerns that this practice may be taking place, in violation of the 1974 Pre-Clearance Treaty between the United States and Canada.[21]

Customs also appears to be placing the names of a select group of persons who are suspected of traveling to Cuba in violation of the Cuban Assets Control Regulations on a watch list used by the agency to screen for travelers who are of concern to law enforcement agencies. Many of the Center's clients have complained that after having been stopped by Customs agents on their return from Cuba, they have been subjected to heightened inspection procedures at airports whenever they travel internationally.

Upon their return from Cuba, travelers who have been identified by Customs as having traveled in violation of the regulations receive a Pre-Penalty Notice from OFAC assessing a civil penalty of around $7,500 when a single unauthorized trip is alleged, and around $17,500 when two unauthorized trips are alleged. Thus, a family of four that has visited Cuba in the mistaken belief that the travel was lawful should expect OFAC to assess a penalty of $30,000. And just three months ago, in November 2001, the Center received for the first time a Pre-Penalty Notice demanding an additional civil penalty of $1,500 from a traveler who had allegedly responded to a Requirement to Furnish Information outside of the allotted 20 business day time period for doing so.

The penalties demanded by OFAC are plainly excessive and unreasonable. OFAC sets penalties without consideration of whether the traveler reasonably understood his or her travel to be lawful, how many days the traveler stayed in Cuba, or the nature of the traveler's activities while in Cuba and whether those activities fall within the parameters of licensable activity. More critically, OFAC sets penalties without consideration of the purported purpose of the travel restrictions—the amount of United States currency that the traveler has introduced into the Cuban economy.

MOREOVER, THESE ENFORCEMENT EFFORTS ARE BEING STEPPED UP AT A TIME WHEN GOVERNMENT RESOURCES ARE URGENTLY NEEDED TO FIGHT TERRORISM

Between January 2001 and the present, the number of individuals who have received Requirement to Furnish Information forms and Pre-Penalty Notices from OFAC has skyrocketed. In July 2001, in response to widespread complaints of a Bush Administration crackdown on Americans traveling to Cuba, a spokesperson for the Department of the Treasury finally acknowledged that "a higher incidence of penalty cases are being issued at this time."[22] This increase, however, was attributed by the spokesperson "solely to the normal ebb and flow of OFAC's workload rather than a shift in policy."[23] Soon thereafter, the Department of the Treasury reported that while OFAC had issued only 188 enforcement letters in all of 2000, it had issued 517 such letters between January and July of 2001.[24]

The increase in OFAC enforcement activity caused the Center for Constitutional Rights' Cuba Travel Project to be flooded with new requests for legal representation. Between January and June of 2001, the Center accepted 162 new cases for representation—far more than the 137 cases it accepted in all of 2000, the 55 cases that it accepted in 1999, or the 49 cases that it accepted in 1998. When its caseload exceeded 400 at the end of June, 2001, the Cuba Travel Project was forced to turn away new cases for the first time since it opened its doors in 1998. In order to fill the void caused by its inability to accept new cases, the Center, in conjunction with

[21] Glen McGregor and Mike Trickey, "Canada Opposes U.S. Crackdown on Cuba Visitors," *Ottawa Citizen,* September 1, 2001.

[22] Rafael Lorente, "U.S. Tightens Cuban Embargo," *The Washington Times,* July 5, 2001.

[23] *Id.*

[24] *See* Sullivan, "Americans Defy Cuba Embargo," *supra* note 16.

the National Lawyers Guild, formed a "Wall of Lawyers" project. Lawyers from all across the nation have agreed to provide legal representation to individuals accused by OFAC of violating the Cuban Assets Control Regulations.

For the first few months following the terrorist attacks of September 11, 2001, OFAC slowed down its enforcement of the restrictions on travel to Cuba. However, the agency has apparently decided to make up for lost time. Last month, January 2002, OFAC issued 18 new Pre-Penalty Notices just to existing clients of the Center. This is an unusually high number of Pre-Penalty Notices for the Center to receive in a single month, and it is a strong indication that OFAC is once again stepping up its enforcement of the Cuban Assets Control Regulations. In addition, the Center was recently informed by OFAC officials that Administrative Law Judges will soon be conducting the hearings that have been requested by individuals who have been charged with violating the Cuban Assets Control Regulations. During the ten years that the Cuba Democracy Act of 1992 has provided such individuals with the right to an Administrative Law Judge hearing, the Department of the Treasury has never had any judges on staff.[25] As of December 2001, the backlog of requested hearings was reported to be 357.[26] OFAC's devotion of additional resources to the enforcement of the Cuban Assets Control Regulations at a time when it has been assigned responsibility for tracing and blocking the assets of the terrorists responsible for the attacks of September 11 is profoundly troubling.[27]

THE RESTRICTIONS ON TRAVEL TO CUBA WILL REMAIN IN PLACE UNLESS AND UNTIL CONGRESS ENACTS LEGISLATION TO TERMINATE THEM

Neither the judiciary nor the executive branch is likely to bring about an end to current restrictions on travel to Cuba. Now that Cold War tensions have been defused and Cuba no longer presents a credible military threat to the United States, it is possible that the courts will no longer be willing to accept at face value the government's assertion that the travel restrictions are justified on national security grounds. However, the judiciary has a long tradition of deferring to Congress and the Executive on matters of foreign policy, particularly where—as here—the two political branches are in agreement with one another. Notably, as recently as 1996, the Court of Appeals for the Ninth Circuit refused to look behind the government proffer in support of the travel restrictions.[28]

And even if the executive branch were so inclined, it has been barred since October 28, 2000, from granting licenses for travel to Cuba for any activities other than the limited set of activities for which licenses are currently permitted under the Cuban Assets Control Regulations. In essence, the amendment in 2000 to the Trade Sanctions Reform and Export Enhancement Act, 22 U.S.C § 7209(b), has codified the travel restrictions in the Cuban Assets Control Regulations into law.[29]

Thus, as a practical matter, the restrictions on travel to Cuba will not be lifted unless and until Congress enacts legislation to terminate them. Such legislation should explicitly repeal all existing statutory authorization for the restrictions, including the Trading with the Enemy Act, the Cuban Democracy Act, the Helms-Burton Act, and the Trade Sanctions Reform and Export Enhancement Act. Such legislation should also provide for the dismissal of all pending OFAC enforcement proceedings under the Cuban Assets Control Regulations. Individuals subject to these proceedings have already endured the anxiety and the taint of having unresolved charges of wrong-doing filed against them without the ability to have their requests for an Administrative Law Judge hearing fulfilled. These charges have been pending for upwards of 10 years due to the Department of the Treasury's failure to comply with its obligations under the Cuban Democracy Act of 1992. The dismissal of these cases would also serve the public interest, as it would permit OFAC to shift its resources away from Cuba—which is not a danger to the United States—to the many genuine dangers that are lurking, such as the threat of an imminent terrorist attack.

Legislation that simply cuts off funding to OFAC for enforcement of the travel restrictions without legalizing travel to Cuba will not resolve the lack of accountability and fairness that is inherent to any licensing permit scheme. Such a half-hearted measure could make it impossible for people wishing to travel to Cuba to obtain specific licenses for such travel. In the event that they chose to travel without a license,

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[25] Ken Guggenheim, "Lengthy Backlog of Cuba Travel Cases," AP Online, December 16, 2001.
[26] *Id.*
[27] *See* Executive Order 13224, "Blocking Property and Prohibiting Transactions with Persons who Commit, Threaten to Commit, or Support Terrorism" (September 24, 2001).
[28] *See Freedom to Travel Campaign* v. *Newcomb,* 83 F.3d 1431 (9th Cir. 1996).
[29] *See supra* Note 1.

their travel could form the basis of a future OFAC enforcement action if funding to OFAC for enforcement were restored.

This year marks the 40th anniversary of the Cuban Missile Crisis. Congress should seize the moment and take this critical first step towards mending the Cold War-era fences that separate us from one of our closest neighbors. The restrictions on travel to Cuba have outlived their purpose. Moreover, their senselessness, and the arbitrary and unfair manner in which they have been applied, only serve to breed contempt and disrespect for the laws of this nation. Their repeal by legislation is long overdue.

Thank you once again for providing the Center for Constitutional Rights with this opportunity to address the Subcommittee on these important matters.

Senator DORGAN. Let me ask a couple of questions and then we will go to the next panel.

Ms. Meister and Mr. Harriman, my understanding is that your cases are still unresolved at this point, is that the case?

Mr. HARRIMAN. That is correct.

Ms. MEISTER. Yes, correct.

Senator DORGAN. Are you concerned about speaking publicly on this matter inasmuch as your cases are as yet unresolved?

Ms. MEISTER. Yes. To an extent, yes.

Mr. HARRIMAN. I am concerned depending on what questions I may have, but I feel it is very important for me to express my ideas here. There certainly may be some questions that I will not answer at this time.

Senator DORGAN. Mr. Allen, your case is resolved and you paid a $700 fine.

Mr. ALLEN. That is correct.

Senator DORGAN. Let me ask, Dr. Gilderbloom, you were talking about articles that OFAC was critical of. Did I misunderstand that? You have a website and you have also written articles——

Mr. GILDERBLOOM. Yes.

Senator DORGAN [continuing]. And someone was critical of the articles. Was that the Cuban government or OFAC?

Mr. GILDERBLOOM. Members of the Cuban government were upset with both the website listing privately-owned restaurants, privately-owned places to stay, non-government artists, and also a variety of perspectives both critical of the Cuban government, as well as a professional article I wrote in Planning magazine, which is the foremost article in journal planning. They were upset because I used the word "embargo" instead of "blockade" and they called me a member of the Cuban mafia in Miami, that I was, and other denigrating comments. Shortly after that, they said I was banned from going to the university to have official visits with urban planning faculty.

And then in addition, they were quite upset—we had to find a host organization, and so this host organization also insisted, but I resisted in terms of going to certain places that they did not want Americans to see, which were shantytowns, people living almost in shacks, caves, on the river, in tents, because we wanted to show both sides of the Cuban revolution.

Senator DORGAN. But your license at this point is denied and you are appealing that denial, is that correct?

Mr. GILDERBLOOM. We hope to appeal, but we have been after this for 11 months now and we do not think—we are going to try our best, but I think with this testimony today, we have put OFAC in a corner to defend itself.

Senator DORGAN. Again, summarize for me briefly, why do you think your license request was denied?

Mr. GILDERBLOOM. Well, they stated in public that we were not meeting enough with—have enough non-government people-to-people contacts, and, in fact, we worked with the U.S. Interests Section on meeting with various people and introducing people to that.

The second thing is, they are very upset with the website, which is one of the products we produce, which listed non-government restaurants, places to stay, and so on. But they keep on—they did not put that in the letter. That is what is frustrating. It is one thing they say not enough people-to-people contact. Well, we could document all that. Now they are upset with how we designed the website. and then they went on and said——

Senator DORGAN. Was that as part of a discussion with them? You said that was not in writing.

Mr. GILDERBLOOM. Yes. It was a discussion with our Congressional representative. and then they said, "We do not like two of the books you are using." And I said, okay, we will take them out.

Senator DORGAN. Ms. Chang, you indicated in your testimony and I suggested in mine that there has been a substantial increase in enforcement actions. I think OFAC may contest that when they testify, but give me the basis for that statement, if you would.

Ms. CHANG. Starting in the beginning of 2001, our intake shot up. We were flooded with phone calls and took in more cases in the first half of 2001 than we had previously accepted and we had to shut down our intake. We were just overwhelmed. And just last month, January of 2002, we received 18 pre-penalty notices in the mail from OFAC. That is an unusually high number for us and indicates an increase in activity in the agency.

Senator DORGAN. Mr. Harriman and Ms. Meister, both of you seem to indicate that you were advised by various organizations, you, Ms. Meister, a travel agency in Canada, and Mr. Harriman, you were advised by some organization that you were a part of——

Mr. HARRIMAN. That's correct.

Senator DORGAN [continuing]. That the kind of travel you were embarking upon was legal, is that correct?

Ms. MEISTER. Exactly. I had no intention of doing anything to violate the law.

Senator DORGAN. And when you received the notice of assessment from OFAC and Treasury, did you personally contact them to visit with them about it or did you employ an attorney?

Ms. MEISTER. Oh, I personally, at that point.

Senator DORGAN. And I assume you told them what you essentially told us this morning. What was their reaction?

Ms. MEISTER. Let me see. A period of time went by. I completed a comprehensive inquiry of what I did there, et cetera. Then as I recall, it was just to be pending, that I would hear from them again.

Senator DORGAN. Mr. Harriman.

Mr. HARRIMAN. I did contact OFAC when I received the pre-penalty notice. At that point, I believe that if they had the facts in front of them, the documentation that our organization was participating and I was an official representative, that they might be able to clear it up. After a short time speaking on the phone with the

contact at OFAC, it became clear that that was not going to be the case, so I ended the conversation there and began my own independent inquiries, starting with the American Go Association, its president and other people who have in the past had some interest in the Cuban travel. Only after going through that and a couple other degrees of separation did I find the Center for Constitutional Rights and signed them as my counsel.

Senator DORGAN. Your testimony is helpful in that it describes a range of experiences that people have had in dealing with OFAC and the Treasury Department and in confronting this statutory provision here in the United States that prohibits the freedom to travel to Cuba except that which has been approved.

Let me thank all of you for your testimony. Your complete statement will be a part of the record, and I want to go on to the other witnesses. You may be excused. Feel free to take a seat and listen to the rest of the hearing. Thank you very much for appearing here today.

Senator DORGAN. Next, we will ask for testimony from Richard Newcomb, who is Director of the Office of Foreign Assets Control, and James Carragher, the Coordinator for Cuban Affairs at the Department of State. If you would please come forward and take your chair at the table, we would appreciate that.

Thank you very much for being with us. Mr. Newcomb, you and I have visited on previous occasions. You are the Director of Foreign Assets Control. Let me ask you to proceed, and afterward we will ask Mr. James Carragher, the Coordinator for Cuban Affairs at the State Department to proceed.

Mr. Newcomb, thank you very much.

STATEMENT OF RICHARD NEWCOMB, DIRECTOR, OFFICE OF FOREIGN ASSETS CONTROL, DEPARTMENT OF THE TREASURY

Mr. NEWCOMB. Thank you, Mr. Chairman. I am delighted to have the opportunity to appear here this morning to discuss restrictions on travel to Cuba and issues concerning the administration and enforcement of restrictions on travel-related transactions involving Cuba.

As you know, the Treasury's Office of Foreign Assets Control is currently responsible for administering and enforcing 24 economic sanctions programs, most recently, the President's September 23 Executive Order targeting persons who commit, threaten to commit, or support terrorism. With respect to the embargo on Cuba, the President as recently as January 17 of this year has reasserted his commitment to the use of the embargo and travel restrictions to encourage transition to democracy in Cuba. When I speak of travel during the course of this testimony, I refer specifically to restrictions on transactions related to travel rather than simply to restrictions on travel.

OFAC's jurisdiction under the Trading with the Enemy Act is to prohibit or regulate commercial or financial transactions, not travel per se. The licensing criteria set forth in the Cuban Asset Control Regulations, implemented under the authority of the statute, address transactions incident to travel and other transactions that are directly incident to those activities deemed consistent with U.S. foreign policy.

We enforce against transactions engaged in by persons subject to U.S. jurisdiction when those transactions are entered into without authorization. In contrast, travel to Cuba that is fully hosted by Cuban or third country nationals where nothing of value is provided in return is not covered by the regulations. OFAC's jurisdiction under the Trading with the Enemy Act to regulate these classes of transactions has withstood judicial review and been confirmed by the United States Supreme Court.

The licensing regime applicable to transactions involving Cuba travel took its present form toward the end of the last administration, with an emphasis on people-to-people contact and family reunification. This is only the most recent development in administration policy on the subject, however, and the current status of Cuba travel is very much a legacy of both political parties.

I have appended a chronology to my testimony demonstrating how often this policy has shifted with respect to travel to Cuba. In 1977, for example, President Carter lifted restrictions on travel to Cuba in their entirety, such that all travel-related transactions involving Cuba were authorized under a general license. General license in OFAC parlance constitute blanket authorization for those transactions set forth in the general license in OFAC's regulations and are self-selecting and self-executing. No further case-specific permission is required to engage in transactions covered by that general license.

Then in 1982, the pendulum swung in the other direction. President Reagan imposed a prohibition on all travel-related transactions. The preexisting general license was limited to official U.S. or foreign government travel, visits to close relatives, travel related to journalism, professional research of an academic nature, and certain professional meetings.

From 1982 to early 1994, the general license authorizations remained unchanged. Travel transactions for humanitarian reasons, public performances, exhibitions, and similar activities were specifically licensed on a case-by-case basis.

In 1993, under President Clinton, specific licenses were made available for travel transactions related to educational, religious, and human rights activities and the export or import of informational materials.

In the summer of 1994, responding in part to Cuban policies that resulted in thousands of Cuban rafters crossing the Florida straits, President Clinton tightened OFAC's licensing regime to require specific licenses for all the diplomats and full-time journalists. U.S. persons seeking to visit close relatives in Cuba instantly became by far the largest source of specific license applications. The following year, the general license was reinstated for professional research, professional meetings, and the first family visit in circumstances of extreme humanitarian need during any 12-month period.

Subsequent to the Pope's visit to Cuba in 1998, President Clinton announced a new policy in 1999 to promote increased people-to-people contacts in support of the Cuban people. The result of this policy shift is reflected in the current 12 regulatory categories of activities for which travel-related and other transactions are authorized, either by general or specific license. General licenses continued to apply to diplomats, full-time journalists, professional re-

searchers, certain professional meetings, and the first family visit per 12-month period. The requirement that the family visit take place under circumstances of extreme humanitarian need, however, was eliminated.

Over the years, Congress has been actively involved in the formulation of policy with regard to Cuba generally and Cuba travel in particular. In 1992, the Cuban Democracy Act added civil penalty authority and required the creation of an administrative hearing process for civil penalty cases and the establishment of an OFAC satellite office in Miami to assist in administering and enforcing the Cuba program. The Cuban Libertarte Act of 1996 required that the underlying prohibitions as set forth in the regulations are to remain in place until there is a transition to a democratically-elected government in Cuba.

Finally, in 2000, Congress passed the Trade Sanctions Reform and Export Enhancement Act, restricting the President's discretion authority to authorize certain travel-related transactions to, from, or within Cuba. Under Section 910 of TSRA, that authority is restricted to travel-related transactions related to activities expressly authorized in paragraphs one through 12 of Section 515.560 of Title 31 CFR or any section referred to in any of the paragraphs one through 12. Any activity falling outside of these 12 categories is defined in this section of the TSRA as tourism and may not be the basis for issuing a license.

Section 910 of TSRA also expressly provides for case-by-case review of license applications for travel in support of agricultural exports, an activity referred to in paragraph 12 of 515.560, but in so doing restricted the President's discretion to authorize such trips by general license.

I have appended a synopsis of these 12 categories of activities for which travel-related transactions may be authorized to this testimony for ease of reference. I have also appended our brochure on Cuba entitled, "What You Need to Know About the U.S. Embargo," which covers all facets of this economic sanctions program.

OFAC processes a large number of license applications relating to the Cuban embargo the majority of which cover travel. License applications relating to subsequent family visits, freelance journalism, educational activities by accredited U.S. financial academic institutions, religious activities, informational materials, and agriculture and medical exports are processed by our Miami office. During calendar year 2001, the Miami office handled over 19,000 license applications for travel, particularly family visits, and at least as many attendant telephone calls.

Another of the office's primary responsibilities is to regulate certain activities of 182 entities nationwide which are currently licensed to provide travel and carrier service to authorized travelers and to remit funds to Cuban households on behalf of individuals who are subject to U.S. jurisdiction in the amounts and frequency authorized under the regulations implementing the Service Provider Program.

Almost two-thirds of these licensed entities are headquarted in Miami. Integral to this regulatory process is the licensing and compliance oversight of the direct charter flights to Cuba currently authorized from Miami, Los Angeles, and New York to carry author-

ized travelers. I have appended a copy of OFAC Circular 2001 setting forth guidelines applicable to the Service Provider Program.

The Miami office also investigates alleged violations of the regulations and processes enforcement referrals to the U.S. Customs Service and the U.S. Coast Guard.

The remaining travel-related license applications are processed at OFAC's main office here in Washington, D.C., along with all non-travel license applications involving Cuba, relating to everything from blocked assets to international corporate acquisitions. The travel-related applications include those involving professional research and attendance at professional meetings not covered by the general license, educational exchanges not involving academic study pursuant to a grade program, participation in a public performance, clinic, workshops, athletic or other competition or exhibit in Cuba, support for the Cuban people as provided by the Cuban Democracy Act, humanitarian projects, activities of private foundations, a research or educational institute, and exports of medicine or medical supplies and certain telecommunications equipment or reexports of U.S.-origin ag commodities from a third country to Cuba.

During calendar year 2001, OFAC's Washington staff handled 1,300 license applications for travel in these various categories, with support from our general counsel. We endeavor to process license applications within 2 weeks absent the need for interagency review, and most travel-related applications fall within this category. There are many instances, however, where a given application fails to meet the applicable licensing criteria. Depending upon the circumstances, the licensing officer may contact the applicant to request additional information or clarification or prepare a letter of denial.

Certain applications may have been delayed by the anthrax threat, which caused the main Treasury mailroom to shut down for several weeks. Mail continues now to be delayed for up to 2 months because of the decontamination process that has since been put into place.

Recent events have, unfortunately, given rise to misperceptions on the part of the U.S. public regarding travel to Cuba. While travel for purposes of tourism or most business transactions remains strictly prohibited, travel guides to Cuba are readily available in bookstores or on the Internet portraying Cuba as just another Caribbean tourist destination.

The Pope's visit to Cuba in 1998, President Clinton's 1999 people-to-people initiative, the recent surge in popularity of Cuban music and culture, and the Elian Gonzalez case have all served in one way to focus the American public's interest and attention on this country. It appears that a great deal of current frustration regarding the denial of license applications involves a disconnect in what constitutes an educational exchange or people-to-people contact. These terms are often used in license applications but are not accompanied by materials sufficient to demonstrate eligibility according to the licensing criteria.

We will continue to work to streamline these licensing criteria and at the same time promote greater transparency and understanding by the public. Educational exchanges not involving aca-

demic study pursuant to a degree program must take place under the auspices of an organization that sponsors and organizes such programs to promote people-to-people contact.

We have published explanatory guidelines on our Internet website. These guidelines provide, in part, that people-to-people contact normally entails direct interaction between U.S. and Cuban individuals not affiliated with the Cuban government and normally does not involve meetings with Cuban government officials.

OFAC evaluates, among other things, whether the U.S. program is structured to result in direct and individual dialogue with the Cuban people and whether the proposed activities with the Cuban people are educational in nature, such as participation in joint activities that may include seminars, lectures, and workshops. We also evaluate whether each traveler may be fully participating in all of the proposed people-to-people activities.

Educational exchange involving people-to-people contact does not include travel for purposes of, for example, a railroad hobbyist, for example, who desires to see aging locomotives in Cuba, or a U.S. city's desire to establish a sister city relationship with government officials of a Cuban city or province, or a group of architects getting together to take a walking tour of Havana. Such proposed itineraries are not made more acceptable by a traveler's commitment to distribute amounts of over-the-counter medicines or visit Cuba clergy or dissidents during the trip when such contacts are minimal and clearly not the primary focus of the trip.

Two-year licenses for such exchanges issued at the advent of the people-to-people initiative in 1999 are now coming up for renewal. As we review activities undertaken pursuant to those licenses during the past 2 years, it appears that not all of the activities that took place pursuant to those licenses entirely conformed to the intent of the licenses as issued. For example, some holders allowed other groups to travel to Cuba under the authority of their licenses when that particular use of the license was not contemplated in the original submission for review.

Accordingly, we are exercising a heightened degree of scrutiny in our review of those requests for renewals and are incorporating reporting requirements into the renewed licenses to ensure better compliance.

Finally, there has also been some confusion with respect to our licensing criteria with respect to applications to permit persons to travel to Cuba in conjunction with the exportation of agricultural commodities authorized by the Department of Commerce. Consistent with the TSRA, the regulations provide that travel and other transactions that are directly incident to marketing sales negotiation, accompanying delivery, or servicing of exports that appear consistent with the export licensing policy of the Department of Commerce may be authorized by a specific license.

This licensing criterion does not include trade missions to discuss transactions that are not currently authorized, such as direct U.S. financing with a view toward eventual end of the embargo. It also does not permit individuals with no apparent nexus to the criterion to join the trip simply out of personal interest or a familial relationship to another traveler. While there is no limitation on numbers of participants in any given group, this nexus must exist be-

tween each traveler and the activity in which he or she seeks to engage. Large numbers are sometimes an indication that no such nexus may exist, but it is not dispositive.

We have just issued explanatory guidelines on our website to provide additional guidance to persons applying for these licenses.

Prior to 1992, OFAC lacked civil penalty authority to enforce the Cuban embargo. Criminal prosecution of travel-related violations was extremely rare. In my experience, U.S. Attorneys often do not accept travel violations for criminal prosecution absent other illegal commercial or financial transactions by the traveler involving Cuba or Cuban nationals. The lack of criminal prosecutions is widely reported in the media and almost any travel publication that discusses Cuba.

With the passage of the Cuban Democracy Act in 1992, the Trading with the Enemy Act was amended to provide that civil fines of up to $50,000, now adjusted for inflation to $55,000, could be levied for violation of the regulations. The Cuban Democracy Act also required that the Secretary of the Treasury impose such penalties only on the record after an opportunity for an agency hearing with the right to pre-hearing discovery.

In 1996, the Libertarte Act increased the number of categories of violations for which civil penalties may be sought to include all travel-related violations. In February 1997, OFAC promulgated proposed regulations to govern the hearings, and in March 1998 published final regulations. Judicial review by Article III courts is available once the administrative law judge's civil penalty determination is made final.

No administration review process is currently in place, despite the efforts over the years to establish such a process. I am pleased to note, however, that Treasury Secretary O'Neill has approved a proposal for the Treasury Department funding of two administrative law judges with necessary support staff.

The majority of OFAC's enforcement actions with respect to the Cuban embargo concern individuals who engage in unauthorized travel transactions related to Cuba tourism. For many reasons, including those previously articulated, increasingly larger numbers of Americans disregard the law and travel to Cuba purely for tourism. Interest in Cuba on the part of otherwise law-abiding Americans has also been exploited by foreign travel agencies that falsely advertise trips to Cuba, claiming that such travel is legal. OFAC has endeavored to correct these agencies' misrepresentations by contacting them directly and placing advisories for all to see on our website.

Beyond tourism, certain organizations and individuals view travel to Cuba as an act of civil disobedience. Organized challenges to the embargo have taken the form of protests involving unlicensed travel transactions and the unlicensed export of goods.

There are passionate constituencies on both sides of this issue, those who believe that we do not do enough to stem the flow of U.S. tourist travel to Cuba and those who believe that any regulation of travel is an infringement of their constitutional rights. We have worked hard to develop procedures with the Customs Service to identify unlicensed travelers returning to the United States. We

have endeavored to enforce these restrictions in an even-handed manner that is consistent with our responsibilities under the law.

Returning Cuban travelers are identified by Customs agents and inspectors at ports of entry in the United States or at U.S. preclearance facilities in Canada or the Bahamas. Those travelers who do not claim a general or specific license from OFAC to engage in Cuba travel-related transactions are routinely referred to OFAC for investigation and civil penalty action. This workload is an extremely heavy drain on finite enforcement and legal resources.

When an enforcement case is referred for civil penalty consideration, the administrative record either contains evidence of transactions involving Cuba or the pre-penalty notice is premised on a rebuttable presumption that an individual who traveled to Cuba necessarily engaged in transactions involving Cuba. This presumption appears in OFAC's regulations and may be rebutted by documentation establishing that the traveler was fully hosted by a Cuban or third country national. If the presumption is not rebutted, a pre-penalty notice with statement of rights and procedures attached is then issued alleging violations of the embargo.

In many instances, individuals request an informal settlement before OFAC issues a pre-penalty notice. Typical penalty assessments for unauthorized travel range from $5,000 to $7,500, but the majority of cases are settled in amounts ranging from roughly $2,000 to $5,000, depending on the circumstances.

A number of pre-penalty notice recipients, however, request administrative hearings, often with the assistance of public interest legal organizations. As previously mentioned, these cases are awaiting the funding and selection of administrative law judges.

I have appended a chart that depicts our travel-related enforcement case openings and referral for civil penalty review, as well as the number of Cuba travel pre-penalty notices issued for the period January 1996 through June 2001. As shown, over 4,500 travel cases were opened for investigation. Nearly 1,700 cases were referred for civil penalty review, and pre-penalty notices were issued in 947 cases. Again, individuals request informal settlements with OFAC without the issuance of a pre-penalty notice.

At this time, we devote approximately five percent of our budget and seven full-time equivalent positions to the administration and enforcement of restrictions involving travel to Cuba. In addition, our general counsel devotes significant resources in support of these efforts. We remain committed to carrying out the President's mandate that enforcement of the Cuban embargo be enhanced under current law. OFAC remains committed to carrying out the President's mandate that enforcement of the Cuban embargo be enhanced under current law. We will continue to administer and enforce the restrictions on travel-related transactions involving Cuba in a manner that is timely, fair, and consistent with the law.

Thank you, Mr. Chairman, for giving me the opportunity to read this full statement into the record.

PREPARED STATEMENT

Senator DORGAN. Mr. Newcomb, thank you. I did not interrupt you or ask you to summarize, inasmuch as there were five wit-

nesses prior to you talking about OFAC, and inasmuch as Mr. Carragher also has a rather short statement.

[The statement follows:]

PREPARED STATEMENT OF R. RICHARD NEWCOMB

INTRODUCTION

Chairman Dorgan, Members of the Subcommittee, Thank you for the opportunity today to address issues concerning the administration and enforcement of restrictions on travel-related transactions involving Cuba. As you know, the Treasury Department's Office of Foreign Assets Control ("OFAC") is currently responsible for administering and enforcing 24 economic sanctions programs, most recently the President's September 23 Executive Order targeting persons who commit, threaten to commit, or support terrorism. With respect to the embargo on Cuba, the President, as recently as January 17, has reasserted his commitment to the use of the embargo and travel restrictions to encourage a transition to democracy in Cuba. (attachment 1)

When I speak about travel during the course of this testimony, I refer specifically to restrictions on "transactions related to travel," rather than simply to "restrictions on travel." OFAC's jurisdiction under the Trading With the Enemy Act ("TWEA") is to prohibit or regulate commercial or financial transactions, not travel per se. The licensing criteria set forth in the Cuban Assets Control Regulations, 31 CFR Part 515 (the "Regulations"), implemented under the authority of this statute, address transactions incident to travel and other transactions that are directly incident to those activities deemed consistent with U.S. foreign policy.

We enforce against transactions engaged in by persons subject to U.S. jurisdiction when those transactions are entered into without authorization. In contrast, travel to Cuba that is fully hosted by Cuban or third-country nationals, where nothing of value is provided in return, is not covered by the Regulations. OFAC's jurisdiction under TWEA to regulate these classes of transactions has withstood judicial review and been confirmed by the United States Supreme Court.[1]

LICENSING

Historical Context

The licensing regime applicable to transactions involving Cuba travel took its present form toward the end of the last administration, with an emphasis on people-to-people contact and family reunification. This is only the most recent development in administration policy on the subject, however, and the current status of Cuba travel is very much a legacy of both political parties. I have appended a chronology demonstrating how often the policy has shifted with respect to Cuba travel. (attachment 2)

In 1977, for example, President Carter lifted restrictions on travel to Cuba in their entirety, such that all travel-related transactions involving Cuba were authorized under a general license. General licenses in OFAC parlance constitute blanket authorization for those transactions set forth in the general license in OFAC's regulations, and are self-selecting and self-executing. No further case-specific permission is required to engage in transactions covered by that general license. Then, in 1982, the pendulum swung in the other direction, and President Reagan reimposed a prohibition on all travel-related transactions. The pre-existing general license was limited to official U.S. or foreign government travel, visits to close relatives, and travel

[1] 1 The Supreme Court upheld restrictions on travel-related transactions with Cuba in *Regan* v. *Wald*, 468 U.S. 111 (1984). The Court held that TWEA provides an adequate statutory basis for the 1982 amendment to the Regulations restricting the scope of permissible travel-related transactions with Cuba and Cuban nationals. The Court rejected the argument that such a regulation violates the right to travel guaranteed by the Due Process Clause of the Fifth Amendment to the Constitution. It held that, in light of the traditional deference given to executive judgment in the realm of foreign policy, the Fifth Amendment right to travel did not overcome the foreign policy justifications supporting the President's decision to curtail the flow of currency to Cuba by restricting financial transactions relating to travel to Cuba. The Court rejected the respondents' argument that a restriction on travel was inappropriate because, in their view, there was no "emergency" at the time with respect to Cuba and that the relations between Cuba and the United States were then subject to "only the normal' tensions inherent in contemporary international affairs." 468 U.S. at 242. The Court declined to second-guess the Executive branch on this foreign policy issue. I*d.* See also: *Freedom to Travel Campaign* v. *Newcomb,* 82 F 3d 1431 (9th Cir. 1996).

related to journalism, professional research of an academic nature and certain professional meetings.

From 1982 to early 1994, the general license authorization remained unchanged. Travel transactions for humanitarian reasons, public performances, exhibitions, and similar activities were specifically licensed on a case-by-case basis. In 1993, under President Clinton, specific licenses were made available for travel transactions related to educational, religious, and human rights activities and the export or import of informational materials.

In the summer of 1994, responding in part to Cuban policies that resulted in thousands of Cuban rafters crossing the Florida Straits, President Clinton tightened OFAC's licensing regime to require specific licenses for all but diplomats and full-time journalists. U.S. persons seeking to visit close relatives in Cuba instantly became by far the largest source of specific license applications. The following year, the general license was reinstated for professional research, professional meetings and the first family visit in circumstances of "extreme humanitarian need" during any 12-month period.

Subsequent to the Pope's visit to Cuba in 1998, President Clinton announced a new policy in 1999 to promote increased people-to-people contacts in support of the Cuban people. The result of this policy shift is reflected in the current twelve regulatory categories of activities for which travel-related and other transactions are authorized, either by general or specific license. General licenses continue to apply to diplomats, full-time journalists, professional researchers, certain professional meetings and the first family visit per 12-month period. The requirement that the family visit take place under circumstances of "extreme" humanitarian need, however, was eliminated.

Existing categories were expanded, most requiring case-by-case authorization by specific license, including educational exchanges, religious activities, athletic competition and public performances and exhibitions. In addition, consistent with an overall policy development applicable to most countries subject to economic sanctions programs that liberalized the export of food and medicine, travel and other transactions directly incident to the marketing, sales negotiation, accompanied delivery or servicing of agricultural exports to Cuba became eligible for authorization by specific license, provided that the exports are of the kind licensed by the Department of Commerce.

Over the years, Congress has been actively involved in the formulation of policy with regard to Cuba generally, and Cuba travel in particular. In 1992, the Cuban Democracy Act (the "CDA") added civil penalty authority and required the creation of an administrative hearing process for civil penalty cases and the establishment of an OFAC satellite office in Miami to assist in administering and enforcing the Cuba program. The Cuban Liberty and Democratic Solidarity (Libertad) Act of 1996 (the "Libertad Act") required that the underlying prohibitions as set forth in the Regulations are to remain in place until there is a transition to a democratically-elected government in Cuba.[2]

Finally, in 2000, Congress passed the Trade Sanctions Reform and Export Enhancement Act (the "TSRA"), restricting the President's discretionary authority to authorize certain travel-related transactions to, from, or within Cuba. Under section 910 of the TSRA, that authority is restricted to travel-related transactions related to activities ". . . expressly authorized in paragraphs (1) through (12) of section 515.560 of title 31, Code of Federal Regulations, or in any section referred to in any of such paragraphs (1) through (12) (as such sections were in effect on June 1, 2000)." Any activity falling outside of these twelve categories is defined in this section of the TSRA as "tourism" and may not be the basis for issuing a license.

Section 910 of the TSRA also expressly provides for case-by-case review of license applications for travel in support of agricultural exports—an activity referred to in paragraph (12) of section 515.560 of the Regulations—but in so doing restricted the President's discretion to authorize such trips by general license. I have appended a synopsis of these twelve categories of activities for which travel-related transactions may be authorized to this testimony for ease of reference. (attachment 3) I have also appended our brochure on Cuba entitled: "What You Need to Know About the U.S. Embargo," which covers all facets of this economic sanctions program. (attachment 4)

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[2] 2 In a December 1998 report, the General Accounting Office concluded that this provision of the Libertad Act did not eliminate the President's authority to make modifying amendments to the Regulations, short of lifting the underlying prohibitions. See: Cuban embargo: Selected Issues Relating to Travel, Exports, and Telecommunications, GAO/NSIAD–99–10.

LICENSING

Administrative process.—OFAC processes a large number of license applications relating to the Cuba embargo, the majority of which concern travel. License applications relating to subsequent family visits, free-lance journalism, educational activities by accredited U.S. academic institutions, religious activities, informational materials and agricultural and medical exports are processed by OFAC's Miami office. During calendar year 2001, the Miami office handled 19,045 license applications for travel, particularly family visits, and at least as many attendant telephone calls.

Another of the office's primary responsibilities is to regulate certain activities of 182 entities nationwide, which are currently licensed to: (1) provide travel and carrier services to authorized travelers; and (2) remit funds to Cuban households on behalf of individuals who are subject to U.S. jurisdiction in the amounts and frequency authorized under the Regulations (the "Service Provider Program"). Almost two-thirds of these licensed entities are headquartered in Miami. Integral to this regulatory program is the licensing and compliance oversight of the direct charter flights to Cuba currently authorized from Miami, Los Angeles and New York to carry authorized travelers. I have appended a copy of OFAC's Circular 2001, setting forth guidelines applicable to the Service Provider Program. (attachment 5) The Miami office also investigates alleged violations of the Regulations and processes enforcement referrals from the U.S. Customs Service and the U.S. Coast Guard.

The remaining travel-related license applications are processed at OFAC's main office in Washington, DC, along with all non-travel license applications involving Cuba, relating to everything from blocked estates to international corporate acquisitions. The travel-related applications include those involving professional research and attendance at professional meetings not covered by the general license, educational exchanges not involving academic study pursuant to a degree program, participation in a public performance, clinic, workshop, athletic or other competition, or exhibition in Cuba, support for the Cuban people as provided in the CDA, humanitarian projects, activities of private foundations or research or educational institutes, and exports of medicine or medical supplies and certain telecommunications equipment or reexports of U.S.-origin agricultural commodities from a third country to Cuba. During calendar year 2001, OFAC's Washington, DC staff handled 1,283 license applications for travel in these various categories, with support from Treasury's Office of the General Counsel.

We endeavor to process license applications within two weeks absent the need for interagency review, and most travel-related applications fall within this category. There are many instances, however, where a given application fails to meet the applicable licensing criteria. Depending upon the circumstances, the licensing officer may contact the applicant to request additional information or clarification or prepare a letter of denial. Certain applications may have been delayed by the anthrax threat, which caused the main Treasury Department mailroom to shut down for several weeks. Mail continues to be delayed for up to two months because of the decontamination process that has since been put into place.

Licensing Criteria.—Recent events have unfortunately given rise to misperceptions on the part of the U.S. public regarding travel to Cuba. While travel for purposes of tourism or most business transactions remains strictly prohibited, travel guides to Cuba are readily available in any bookstore or on the internet portraying Cuba as just another Caribbean tourist destination. The Pope's visit to Cuba in 1998, President Clinton's 1999 people-to-people initiative, the recent surge in popularity of Cuban music and culture and the Elian Gonzales case have all served to focus the American public's interest and attention on this country.

It appears that a great deal of the current frustration regarding the denial of license applications involves a disconnect on what constitutes an "educational exchange" or "people-to-people contact." These terms are often used in license applications but are not accompanied by material sufficient to demonstrate eligibility according to the applicable licensing criteria. We will continue to streamline these licensing criteria and, at the same time, promote greater transparency and understanding by the public.

Educational exchanges not involving academic study pursuant to a degree program must take place under the auspices of an organization that sponsors and organizes such programs to promote people-to-people contact. We have published explanatory guidelines on our Internet website. (attachment 6) These guidelines provide, in part, that people-to-people contact normally entails direct interaction between U.S. and Cuban individuals not affiliated with the Cuban government, and normally does not involve meetings with Cuban government officials. OFAC evaluates, among other things, whether the U.S. program is structured to result in direct and individual dialogue with the Cuban people and whether the proposed activities with the

Cuban people are educational in nature, such as participation in joint activities that may include seminars, lectures and workshops. OFAC also evaluates whether each traveler will be fully participating in all of the proposed people-to-people activities.

Educational exchange involving people-to-people contact does not include travel for purposes of, for example: railroad hobbyists' desire to see aging locomotives in Cuba; a U.S. city's desire to establish a sister city relationship with government officials of a Cuban city or provence, or a group of architects getting together to take a walking tour of Havana. Such proposed itineraries are not made more acceptable by a traveler's commitment to distribute a small amount of over-the-counter medicines or visit Cuban clergy or dissidents during the trip, when such contacts are minimal and clearly not the primary focus of the trip.

Two-year licenses for such exchanges issued at the advent of the people-to-people initiative in 1999 are now coming up for renewal. As we review activities undertaken pursuant to those licenses during the past two years, it appears that not all of the activities that took place pursuant to those licenses entirely conformed to the intent of the licenses as issued. For example, some license holders allowed other groups to travel to Cuba under the authority of their licensees when that particular use of the license was not contemplated in the original submission to OFAC. Accordingly, we are exercising a heightened degree of scrutiny in our review of these requests for renewals, and are incorporating reporting requirements into the renewed licenses to ensure better compliance.

Finally, there has also been some confusion with respect to our licensing criteria with respect to applications to permit persons to travel to Cuba in conjunction with the exportation of agricultural commodities authorized by the Department of Commerce. Consistent with the TSRA, the Regulations provide that travel and other transactions that are directly incident to the "marketing, sales negotiation, accompanied delivery, or servicing of exports that appear consistent with the export licensing policy of the Department of Commerce" may be authorized by specific license.[3]

This licensing criterion does not include trade missions to discuss transactions that are not currently authorized, such as direct U.S. financing, with a view toward the eventual end of the embargo. It also does not permit individuals with no apparent nexus to this criterion to join the trip, simply out of personal interest or a familial relationship to another traveler. While there is no limitation on numbers of participants in any given group, this nexus must exist between each traveler and the activity in which he or she seeks to engage. Large numbers are sometimes an indication that no such nexus exists. We have just issued explanatory guidelines on our website to provide additional guidance to persons applying for these licenses. (attachment 7)

ENFORCEMENT

Historical Context

Prior to 1992, OFAC lacked civil penalty authority to enforce the Cuban embargo. Criminal prosecution of travel-related violations was extremely rare. In my experience, U.S. Attorneys often do not accept travel violations for criminal prosecution absent other illegal commercial or financial transactions by the traveler involving Cuba or Cuban nationals. The lack of criminal prosecutions is widely reported in the media and in almost any travel publication that discusses Cuba. With the passage of the CDA in 1992, the Trading With the Enemy Act ("TWEA") was amended to provide that civil fines of up to $50,000 (now adjusted for inflation to $55,000) could be levied for violations of the Regulations. The CDA also required that the Secretary of the Treasury impose such penalties "only on the record after opportunity for an agency hearing . . . with the right to pre-hearing discovery." In 1996, the LIBERTAD Act increased the number of categories of violations for which civil penalties may be sought to include all travel-related violations. In February 1997, OFAC promulgated proposed regulations to govern the hearings, and in March 1998 published final regulations. Judicial review by Article III courts is available once the Administrative Law Judge's civil penalty determination is made final.

[3] General transportation services relating to these exports are authorized by general license. Consistent with the CDA, vessels are authorized by another OFAC general license to carry goods to Cuba that are authorized for export by the Department of Commerce provided that: (1) they have not engaged in trade or purchased or provided services in Cuba within 180 days or; (2) the vessels are not otherwise carrying goods or passengers in which Cuba or a Cuban national has an interest. Vessels not qualifying for this general authorization may be specifically licensed. Financing of these exports is restricted by the TSRA to payment of cash in advance or to financing by third country financial institutions, except that such financing may be confirmed or advised by a United States financial institution.

No administrative review process is currently in place, despite efforts over the years to establish such a process. I am pleased to note, however, that Secretary O'Neill has approved a proposal for Treasury Department funding of two Administrative Law Judges with the necessary support staff.

INVESTIGATION

The majority of OFAC's enforcement actions with respect to the Cuba embargo concern individuals who engage in unauthorized travel transactions related to Cuba tourism. For many reasons, including those previously articulated, increasingly larger numbers of Americans disregard the law and travel to Cuba purely for tourism. Interest in Cuba on the part of otherwise law-abiding Americans has also been exploited by foreign travel agencies that falsely advertise trips to Cuba claiming that such travel is legal. OFAC has endeavored to correct these agencies' misrepresentations by contacting them directly and placing advisories for all to see on our website. (attachment 8)

Beyond tourism, certain organizations and individuals view travel to Cuba as an act of civil disobedience. Organized challenges to the embargo have taken the form of protests involving unlicensed travel transactions and the unlicensed export of goods. There are passionate constituencies on both sides of this issue, those who believe that we do not do enough to stem the flow of U.S. tourist travel to Cuba and those who believe that any regulation of travel is an infringement of their constitutional rights.

OFAC has worked hard to develop procedures with the Customs Service to identify unlicensed travelers returning to the United States from Cuba. We have endeavored to enforce these restrictions in an evenhanded manner that is consistent with our responsibilities under the law. Returning Cuba travelers are identified by Customs agents and inspectors at ports of entry in the United States or at U.S. Customs Preclearance Facilities in Canada or the Bahamas. Those travelers who do not claim a general or specific license from OFAC to engage in Cuba travel-related transactions are routinely referred to OFAC for investigation and civil penalty action. This workload is an extremely heavy drain on finite enforcement and legal resources.

CIVIL PENALTIES

When an enforcement case is referred for civil penalty consideration, the administrative record either contains evidence of transactions involving Cuba or the prepenalty notice is premised upon a rebuttable presumption that an individual traveling to Cuba necessarily engaged in transactions involving Cuba. This presumption appears in OFAC's Regulations and may be rebutted by documentation establishing that the traveler was fully hosted by a Cuban or third-country national. If the presumption is not rebutted, a prepenalty notice with statement of rights and procedures attached is then issued alleging violations of the embargo. (attachment 9) In many instances, individuals request an informal settlement before OFAC issues a prepenalty notice. Typical penalty assessments for unauthorized travel range from $5,000 to $7,500, but the majority of cases are settled in amounts ranging from roughly $2,000 to $5,000, depending upon the circumstances. A number of prepenalty notice recipients, however, request administrative hearings, often with the assistance of public interest legal organizations. As previously mentioned, these cases are awaiting the funding and selection of Administrative Law Judges.

I have appended a chart that depicts our Cuba travel enforcement case openings and referrals for civil penalty review, as well as the number of Cuba travel Prepenalty Notices issued, for the period of January 1996 through June 2001. (attachment 10) As shown, 4,535 travel cases were opened for investigation; 1,690 cases were referred for civil penalty review; and Prepenalty Notices were issued in 947 cases. Again, many individuals request informal settlements with OFAC without the issuance of prepenalty notices.

CONCLUSION

At this time, OFAC devotes approximately 5 percent of its budget and 7 full-time equivalent positions to the administration and enforcement of restrictions involving travel to Cuba. In addition, Treasury's Office of the General Counsel devotes significant resources in support of these efforts. OFAC remains committed to carrying out the President's mandate that enforcement of the Cuba embargo be enhanced under current law. OFAC will continue to administer and enforce the restrictions on travel-related transactions involving Cuba in a manner that is timely, fair, and consistent with that law.

[CLERK'S NOTE.—The attachments can be found in the subcommittee files.]

Senator DORGAN. Mr. Carragher is the Coordinator for Cuban Affairs at the Department of State. Thank you for being with us. Please proceed.

STATEMENT OF JAMES CARRAGHER, COORDINATOR FOR CUBAN AFFAIRS, DEPARTMENT OF STATE

Mr. CARRAGHER. Mr. Chairman, staff, other distinguished guests, thank you for the opportunity to be with you this morning.

The administration's Cuba policy goal is a rapid, peaceful transition to a democratic government characterized by strong support for human rights and an open market economy. One important tool to achieve that goal is engagement between people, outreach by everyday Americans to everyday Cubans. Outreach introduces the best of the United States to the Cuban people, supports the development of civil society institutions, and brings alternative points of view to the island.

However, travel outside the authority of the Cuban Assets Control Regulations does not contribute to outreach or to our policy goal in Cuba. Instead, it can help to prop up a regime which continues to harass and imprison its people who dare to criticize their government.

The Treasury Department's Office of Foreign Assets Control is responsible for authorizing persons subject to U.S. jurisdiction to engage in travel-related transactions for travel to Cuba. In the vast majority of applications for specific licenses, all of which require case-by-case review, OFAC is able to make a clear-cut determination on whether to issue a specific license based on the application, the relevant regulations, and existing policy.

In some instances, when OFAC believes that an application presents foreign policy implications that have not been previously addressed, OFAC refers the application to the Department of State for review. The Department consults internally and with the NSC. It then typically provides foreign policy guidance to OFAC as to whether or not the proposed activity is consistent with current U.S. Government policy and regulations. This review process assures Department of State input on applications that affect the President's foreign policy.

PREPARED STATEMENT

I believe that this process and OFAC's impartial and even-handed approach to each license application assure that authorized travel-related transactions follow both the letter and the spirit of the law and that they further administration policy goals. Thank you, Mr. Chairman.

Senator DORGAN. Mr. Carragher, thank you very much.

[The statement follows:]

PREPARED STATEMENT OF JAMES CARRAGHER

Mr. Chairman, Committee Members, staff, and other distinguished guests, thank you for the opportunity to be with you this morning.

The Administration's Cuba policy goal is a rapid, peaceful transition to a democratic government characterized by strong support for human rights and an open market economy. One important tool to achieve that goal is engagement between people—outreach by everyday Americans to everyday Cubans. Outreach introduces the best of the United States to the Cuban people, supports the development of civil society institutions and brings alternative points of view to the island. However,

travel outside the authority of the Cuban Assets Control Regulations does not contribute to outreach or to our policy goal in Cuba. Instead it can help to prop up a regime which continues to harass and imprison its people who dare to criticize their government.

The Treasury Department's Office of Foreign Assets Control is responsible for authorizing persons subject to U.S. jurisdiction to engage in travel-related transactions for travel to Cuba. In the vast majority of applications for specific licenses, all of which require case-by-case review, OFAC is able to make a clear-cut determination on whether to issue a specific license based on the application, the relevant regulations and existing policy. In some instances, when OFAC believes an application presents foreign policy implications that have not been previously addressed, OFAC refers the application to the Department of State for review. The Department consults internally and with the NSC. It then typically provides foreign policy guidance to OFAC as to whether or not the proposed activity is consistent with current U.S. Government policy and regulations. This review process assures Department of State input on applications that affect the President's foreign policy.

I believe that this process and OFAC's impartial and evenhanded approach to each license application assure that authorized travel-related. transactions follow both the letter and the spirit of the law and further Administration policy goals.

Thank you, Mr. Chairman.

Senator DORGAN. I have a series of questions. I will skip around a bit.

First, I believe, Mr. Newcomb, you indicated that as a result of the announcement that I referred to in July of last year by President Bush to step up enforcement with respect to travel Cuba, you have stepped up enforcement, is that the case?

Mr. NEWCOMB. Mr. Chairman, following that announcement, we engaged in discussions to determine how that may be implemented and were cut short by the attacks of September 11 and virtually all available free resources have been devoted to that terrorist attack. We have had discussions about this, but as of this point, that initiative has not fully been implemented.

Senator DORGAN. In your written testimony at page 12, you say, "accordingly, we are exercising a heightened degree of scrutiny in our review of requests for renewals." There, you are talking about licenses.

Mr. NEWCOMB. Yes.

Senator DORGAN. And I thought I heard you say that when the President talked about his policy last July of increasing enforcement with respect to the travel ban in Cuba, Treasury and OFAC complied with the President's request.

Mr. NEWCOMB. We are, but we have no additional resources applied to those activities at this time. Any available additional resources have been applied to the terrorist attack. But the review of license applications to determine compliance with the people-to-people exchanges and the group educational licenses, of course, is being reviewed carefully so that they are consistent with existing policy.

Senator DORGAN. In fact, you refer to heightened scrutiny, so that would suggest to me that you are doing what the President has asked you to do.

One person who called my office about this matter who had received a notice from OFAC said that an OFAC employee told him he had been targeted because OFAC employees were "surfing the web," to spot people who post information about traveling to Cuba. Is that one approach that you use to try to determine who might have traveled to Cuba? Do you have employees surfing the web?

Mr. NEWCOMB. Your reading that right now is the first time I have heard that particular statement. I would not rule out the fact that we use all resources available to us to determine unlawful activity, but that is not prescribed policy for enforcement of this program. Again, I would not rule that out, but that is not something we have institutionalized office-wide.

Senator DORGAN. You indicated in a letter to me that you have—I believe you have 129 people working at OFAC and seven of them are working full-time with respect to enforcing the travel ban with Cuba. Is that correct?

Mr. NEWCOMB. That is correct.

Senator DORGAN. So about seven employees full-time and about $1 million, roughly, on enforcing the travel ban?

Mr. NEWCOMB. I am not sure exactly about the dollar amount, but that is approximately correct.

Senator DORGAN. That is what your agency is reporting here.

Mr. NEWCOMB. Then that is fine.

Senator DORGAN. Now, you raised the issue of terrorism and I raised that, as well, in my opening statement. You know that since September 11, there has been a substantial amount of interest in making sure that all necessary resources are used to respond to the terrorist threats against our country and to track the mechanisms by which terrorists finance these attacks. OFAC, of course, is one of the key agencies that we rely on to do that. Incidentally, I think OFAC, along with FINCEN and others, have done an excellent job and I appreciate the work that your employees are doing.

Mr. NEWCOMB. Thank you, Mr. Chairman.

Senator DORGAN. But because you raise that question, terrorists post-September 11, I am wondering what your view is with respect to the relative importance of various areas of enforcement. Let me give you an example of why I ask the question.

There are a lot of laws that one can enforce in this country. Immigration laws—I had an employer tell me once, who is just on the south side of the Canadian border, that the port of entry coming across the Canadian border to the United States opens at 9 a.m. in the morning. He said one of the fellows up there in Canada works for him. He starts work at 8 a.m. every morning and he has never been late. Now, the border does not open until nine. He says, my employee has never been late, so we know that person clearly is moving across the border to go to a job on the U.S. side. I do not suspect that anybody has suggested we send special forces up there to try to figure out who that is.

I just say that there are a lot of things that one can use money on to investigate and evaluate and require conformance with the laws. It seems to me that your agency has a conflict at the moment. You have the President saying you are supposed to ramp up enforcement of the travel ban with respect to Cuba, but I assume that your preeminent responsibility at the moment is dealing with terrorism. How do you feel about that?

Mr. NEWCOMB. Mr. Chairman, clearly, our responsibility is to do, perform, implement, and carry out the enforcement policy laid out by the Treasury Department as directed by the President and I believe we are doing just that. The President did make the announcement on July 13. He also made the announcement on January 17

of this year. We are mindful of those announcements. We are mindful that that is a priority. We also have other programs that we are administering, such as the Foreign Narcotics Kingpin Designation Act and full-fledged embargoes on terrorist-supporting Nations, Iran, Iraq, Libya, Syria, Sudan, North Korea, and Cuba. We have a total of 22 country-specific programs. We maintain lists of terrorist organizations, implementing the Foreign Kingpin Designation Act.

All of those are very important elements of the foreign policy of the United States. I view this as one, and as a public administrator, someone who is responsible for implementing this program, I believe we need to do so in a manner that is fair and even-handed. The allocation of resources on a Presidential priority then becomes set.

Senator DORGAN. Let me ask, do you have discretion with respect to the application of these administrative fines? For example, a retired teacher goes bicycling in Cuba because she is told by a Canadian travel agency that it is cleared. She will be spending no money there. The travel agency will be handling all the money. And so that person calls OFAC and says, look, here is the circumstance. Do you have a rubber stamp that says "guilty," and "fined," or do you have discretion, and if so, what kind of discretion and how do you use it?

Mr. NEWCOMB. Mr. Chairman, we do have considerable discretion and in implementing this program, I believe we have used it.

Senator DORGAN. Let me ask this question, if I might. The man that takes his parents' ashes back to Cuba to bury them near a church they founded many, many years ago, would that not persuade someone with discretion to say, "I understand that. All right. Never mind."

Mr. NEWCOMB. First, if I could respond to your first inquiry——

Senator DORGAN. Sure.

Mr. NEWCOMB [continuing]. That is a matter currently pending before the office, the traveler to Cuba on the bicycle trip. So I think in interest of the process existing before the office, I think it would be best that we not get into discussing that lest it prejudice any rights that she may have or——

Senator DORGAN. Actually, I am not describing Ms. Meister. I am describing someone else. There is more than one retired schoolteacher who retired in Cuba, so we can talk about it without talking about Ms. Meister.

Mr. NEWCOMB. First, as far as discretion in issuing a penalty, we were authorized in 1992 under the Cuban Democracy Act for fines of up to $50,000, and that has been raised recently to a maximum fine of $55,000. We have shown considerable discretion by mitigating that pre-penalty amount by over 80 percent. I think the pre-penalty amount is about 82 percent reduction before we even go out to the public.

And then from there, when a petition is—when a request for further information and a pre-penalty notice is filed, there is considerable opportunity for the party to submit mitigating factors involving that case. I believe the Center for Constitution Rights' testimony and our testimony have both agreed that there are those outside of the United States that would attempt to lure people into

traveling to Cuba that would otherwise be unlawful. That would certainly be in all circumstances an extraordinary mitigating factor. But then there is a judgment factor that comes in, to what extent is this now being used by parties who wish to travel merely as a ruse or is it lawful? That is part of this mitigating process, and we endeavor to do that in every case possible.

Senator DORGAN. Mr. Newcomb, I understand that. What I do not understand is whether you have the discretion to, in certain circumstances, say, look, I understand. You did not know. This was a mistake. Never mind. And if you do not do that in terms of someone taking his parents' ashes to bury at a church site, where they spent one day in Cuba, I assume you would never use that discretion.

Am I right that you would never use sufficient discretion to say, "We understand. We understand what you are telling us and we are not going to issue a fine in this case."

Mr. NEWCOMB. Let me say, in that particular case, the mitigation was well over 99 percent of the authorized amount. There——

Senator DORGAN. I understand there, but there was a $700 fine.

Mr. NEWCOMB. It was a $350 fine per person.

Senator DORGAN. Right.

Mr. NEWCOMB. Three-hundred-and-fifty for one person, $350 for the second.

Senator DORGAN. That is right, $700.

Mr. NEWCOMB. So that is mitigation from $55,000 down to $350, so that was——

Senator DORGAN. But you understand my question. I am just trying to understand, do you have discretion, or is this a circumstance where you simply say, gone to Cuba, does not matter what the excuse is, we are going to fine you. Now, we may mitigate it 98 percent, but you are going to pay a fine. That is my question.

Mr. NEWCOMB. Well, we also look—no, we certainly can and do show considerable discretion, but there was also facts within the record that we also looked to. We compare mitigating factors to aggravating factors in an attempt to weigh both of them when this is settled or a fine is issued. In this particular case involving the travel to Cuba, I believe that was a settlement on agreed terms reduced to a settlement by counsel. So we did enter into that after an offer of settlement was made.

Senator DORGAN. If you would be able to, following the hearing, would you give me examples of circumstances where people have traveled to Cuba and you have decided that, although they traveled, you will levy no fine?

Mr. NEWCOMB. Sure.

Senator DORGAN. Okay.

Mr. NEWCOMB. And I would also like to augment the record as far as the particular cases that have been before the committee——

Senator DORGAN. Of course.

Mr. NEWCOMB [continuing]. Just for sake of making it a full record.

Senator DORGAN. Of course.

Mr. Carragher, in your statement, you indicate "outreach introduces the best of the United States to the Cuban people, supports the development of civil society institutions, and brings alternative

points of view to the island. However, travel outside the authority of the Cuban Assets Control Regulations does not contribute to outreach."

I understand your first point. The second point, I think, is just technical. You are saying that travel outside of the restrictions is illegal, but I do not know how that would obviate the first statement. If travel introduces the best of the United States to the Cuban people, it seems to me it just does, no matter the circumstances of the travel.

Mr. CARRAGHER. I think I was specifically referring in the statement in an unspecific way to travel that would be strictly tourism travel to Cuba as opposed to travel that would have significant or complete intent of interaction directly with the Cuban people.

Senator DORGAN. But with respect to the philosophical point, I think you would argue, and certainly the Department of State would argue, that just tourist travel to the country of China or the country of Vietnam, both of which have communist governments, contributes to engagement and, therefore, to productive opportunity for the countries to better know each other. That is the official position, I believe, of the State Department with respect to China and Vietnam. I am trying to understand how it differs with respect to Cuba in terms of the circumstances that would improve relations between countries in people-to-people contact. Can you describe that for me?

Mr. CARRAGHER. I am not completely familiar—I am not familiar at all with the tourism industries in the two countries that you have mentioned, but the tourism industry in Cuba is under the control, obviously, of the government of Cuba and part of the policy goals, foreign policy goals of the President vis-a-vis Cuba, in addition to encouraging the outreach to ordinary Cubans, is to minimize the flow of hard currency to the government of Cuba and travel to the—directly to the Cuban tourism centers which exist on the island obviously add to the flow of hard currency to the government of Cuba.

Senator DORGAN. I understand. Would that not be the case with respect to the purchase of a silk suit in Beijing? Would that not contribute to the salary of Jiang Zemin in a communist government? You get my point.

Mr. CARRAGHER. I get your point. I——

Senator DORGAN. I just think there is a philosophical contradiction and I think it is one that no one can answer just because it exists for reasons that do not make much sense. But let me ask the question about agriculture, if I might.

Mr. Newcomb, I pointed out that the Farm Foundation applied for a license to send a delegation to Cuba in January. It included two former Secretaries of Agriculture. This is an organization on whose board the current Secretary of Agriculture and the current Under Secretary sit, and they were denied the license. Can you tell me anything about that at all?

Mr. NEWCOMB. Yes. I do not have the complete record in front of me, but I did have a conversation with one of those former Secretaries of Agriculture and I informed him several, perhaps 2 weeks, maybe, before the license was denied. There were many people included in the license application that our staff could not approve.

When these licenses are approved, every individual traveling on a specifically licensed trip must meet the criteria, and that there were a lot of people who did not individually and in their own rights qualify.

We had offered to work with the Farm Foundation to bring down the number of individuals traveling and basically they told us it was an all or nothing situation. Approve them all or reject it. So we were precluded in a process that we try to follow very closely, and that is work with applicants to ensure that if they are qualified, they are able to go, and sometimes this is a give and take with organizations over a period of time so that if they can qualify in and of their own right. But it was essentially this statement that it was an all or nothing proposition, take it or leave it, that led to the fact that we had no choice.

I did communicate that with one of the former Agriculture Secretaries and he seemed to understand what our position was. Now, that is done in those situations and others without prejudice. They can reapply if they wish.

Senator DORGAN. You heard Dr. Gilderbloom's testimony this morning.

Mr. NEWCOMB. I did.

Senator DORGAN. What is your impression of that?

Mr. NEWCOMB. Well, I am certainly sorry that someone is dissatisfied with what we have done in terms of administering this program, but I will say that fit into the category of those license applications it originally granted in 1999 and 2000 that came up for or are coming up for renewal.

I would disagree with the facts somewhat in what he submitted to the committee. When he spoke to our staff, I am told, in June of 2001, he was told—or in May of 2001, he was told that the renewal was not due yet. Please submit an application for renewal at a later time, i.e., when it was due for renewal, and the specific reason why when it was submitted it was denied is one of the conditions of the license states that all participants shall adhere to the structured program of professional research and educational activities and that an individual qualifying under the license shall have the professional background related to the subject matter of the licensed professional research. It was the view of the staff that that did not qualify.

And if I might just make one other statement, in the testimony of the Center for Constitutional Rights, there is testimony that says those who apply for a specific license to travel to Cuba consistently encounter roadblocks, that we have never published any rules or procedures specifying what information a license application is required to contain and what standards OFAC will apply in reviewing license applications. That is not correct. In fact, we have quite extensively made an effort to not only publish regulations, but actually publish guidelines. We have—and they are available on our website. I would like to submit them into the record.

Senator DORGAN. Yes.

Mr. NEWCOMB. They include the particular activity with which Mr. Gilderbloom is speaking, professional research, but also guidelines for academic institutions, guidelines for degree-seeking students, guidelines for religious organizations, guidelines for travel to

Cuba to engage in educational exchanges to promote people-to-people contact, guidelines for travel to Cuba in need of humanitarian aid, guidelines for travel related to agriculture and medicine, something we just issued last week, guidelines for travel to Cuba involving humanitarian projects, and so on. So if I could submit that into the record——

Senator DORGAN. Without objection.

Mr. NEWCOMB [continuing]. As well as our website, which lays this out.

[CLERK'S NOTE.—Information can be found in the subcommittee files.]

Mr. NEWCOMB. I believe, finally, on the Dr. Gilderbloom issue, that we laid out the reasons it was denied. There may be some extraneous issues discussed, but as with any other participant, he certainly is free to redo it and conform with those published guidelines.

Senator DORGAN. Let me ask you, how many people do you think visited Cuba last year? How many Americans visited Cuba last year? Are there any broad estimates? I have heard some.

Mr. NEWCOMB. Yes.

Senator DORGAN. What do you think they are?

Mr. NEWCOMB. I had the exact number about a year ago and I do not recall it exactly. It was something over 150,000 travelers.

Senator DORGAN. Between 150,000 and 200,000 Americans visited Cuba last year?

Mr. NEWCOMB. Within that range, yes. I would say that is correct.

Senator DORGAN. And how many of those would have visited Cuba with permission from OFAC?

Mr. NEWCOMB. Well, there are two categories, general and specific licenses. Of the general license, individuals qualifying within their own right can make the determination that they qualify under the general license and travel. A good example of that is journalists. Another example would be—let us just say journalists, or humanitarian travel, one-time-a-year travel.

Senator DORGAN. But what percent of the people that visited Cuba do you think did so with the specific permission of OFAC, with a license? Do you have any idea?

Mr. NEWCOMB. I would say possibly qualifying under a license, at least two-thirds. There is probably an additional one-third that do not. That is just a rough estimate that I would like to be able to go back and then submit for the record, and the reason I say that is by far the largest number of travelers that go to Cuba are family reunification visitors, individuals visiting family members, defined in our regulations, that are lawful, that they are self-defining by the regulations. We issue licenses for second and subsequent humanitarian visits, so I would never have a complete handle on it. We can take the information that comes from the travel service providers and add that up about travelers taken.

Senator DORGAN. Mr. Carragher, I said when we started this hearing that you are enforcing the law, in conjunction with OFAC. I understand that. But you indicated the purpose of that law and the purpose of the administration's enhanced enforcement of it, both with respect to travel and licensing, is to impose a penalty of

some sort on Fidel Castro. You talked about not providing hard currency to be helpful to Fidel Castro.

It is also your understanding, I am sure, that it imposes a penalty on the American people, restricting their right of free travel. I have been trying to understand for some long while what the criteria is for selecting Cuba vis-a-vis Vietnam or China or others, because we have gone through a great debate here about China and the State Department consistently says engagement is the constructive way to affect the behavior of a government with whom we disagree. Do you disagree with that statement with respect to Cuba?

Mr. CARRAGHER. Certainly, engagement directly with the Cuban people is one of the primary policy tools toward affecting the rapid transition which I talked about.

Senator DORGAN. Restricted engagement, though, because——

Mr. CARRAGHER. I am sorry?

Senator DORGAN. It is restricted engagement at this point, involving only the people that you agree to allow to go to Cuba.

Mr. CARRAGHER. Well, only the people that are—I would submit, Senator, only the people who are permitted by the legislation to travel to Cuba, and I guess when you raised the point a few minutes ago, the obvious difference between China and Vietnam and Cuba is that legislation prohibits strictly tourism travel to Cuba, which is part of the reason why we are here today.

Senator DORGAN. You are absolutely correct about that, and let me just ask the question of both of you. You heard the testimony of a schoolteacher—I mentioned that there is more than one retired schoolteacher that went bicycling in Cuba with a Canadian bicycling club, someone who plays a game that I have not heard of named Go—I guess I have actually seen it in a movie recently, someone who took his parents' ashes back to bury them in Cuba. When you hear these stories, would you believe that there is reason for Congress to review whether this is a very effective policy in reaching the results we would like to reach with the Castro regime in Cuba?

Mr. NEWCOMB. If I could respond——

Senator DORGAN. Yes.

Mr. NEWCOMB. On some of those that you cited, licenses could have been available, but the traveler has declined to try to get the license. On others, because of TSRA, the Trade Sanctions Reform Act, we literally do not have the licensing discretion. I can say unequivocally that the people that work on this certainly have, and have demonstrated over the years, considerable compassion for compelling circumstances, and in the particular case involving the traveler to take his family ashes. I think all of us could agree that that has a compelling persona about it.

In that case, the individual did not elect to apply for a license. Were he to do so now, we would not have the authority to show discretion because TSRA limits 12 categories that were in existence at the time that the Trade Sanctions Reform Act was adopted.

Senator DORGAN. But that is exactly what I am asking you about. Someone cannot take his parents' ashes to Cuba, and it is also the case, that a retired teacher wanting to bicycle in Cuba, would not be approved for a license?

Mr. NEWCOMB. That is deemed by the Congress as tourism.

Senator DORGAN. I understand that, but that is why I asked the larger question of the two of you. What do you think about that?

Mr. NEWCOMB. I defer to my colleague.

Senator DORGAN. I understand that.

I understand that, too, but why do we not hear from both of you? I mean, it just seems to me that this is incongruous. We are going to have a debate in Congress this year about this very subject and perhaps a vote in both the House and the Senate, and the purpose of this hearing is to take a look at what we are spending in order to enforce this, whether it is effective, and after you answer my last question, I am going to ask you both, do you think it can be enforced effectively? If we have 60,000 people visiting Cuba without the sanction of OFAC, it suggests to me that it is a law that is not being enforced very effectively.

Mr. Carragher, why do you not risk your career here and answer my question.

Mr. CARRAGHER. Since Mr. Newcomb lateraled to me the policy question, I will, of course, lateral to him the enforcement question.

Senator DORGAN. I understand, but I am still asking the policy question.

Mr. CARRAGHER. The policy question, I think that, obviously, I do not need to tell you, Senator, that the role of this hearing and the role of the Congress is to, and rightfully so under our system, is to look at all aspects of a foreign policy, domestic policy, legislative issue and seek to come to legislation that will best achieve what Congress deems should be achievable.

From the administration's perspective, this administration, and I can only repeat the President's words, will support nothing to weaken the embargo on Cuba, yet at the same time, a very important aspect of this administration's policy, and I tried to highlight it in my brief written statement, opening statement, was we want to be able to reach out as American people to the Cuban people and we want to do that in a way that enables the American people to bring to the Cuban people, to contribute to bringing to the Cuban people and to that island the currents of freedom and free ideas which are blowing everywhere and have blown everywhere in this hemisphere over the last 20 years and more.

I would submit that the outreach possibilities which are currently licensable under current legislation enable us to do that relatively effectively. We certainly could and always can achieve even more effective outcomes. But outreach and introducing new ideas, new currents of thought, alternative ideas to Cuba, is very much in this administration's interest, I believe, and very much in the U.S. interests.

Senator DORGAN. The announcement last summer that was made by the administration that they are going to crack down and ramp up enforcement do not square with that general approach. The shorter answer, which you probably are not at liberty to give, is that this really does not make much sense.

It is an attempt to punish Fidel Castro but, in fact, punishes Americans by restricting their right of free travel. It is inconsistent with the way we handle travel to other communist countries, Vietnam and China, for example, and the Congress ought to take a look

at changing it. Mr. Newcomb would be best served by having that $1 million and seven people, to be checking on hard-core terrorists who are transferring money in the pursuit of terrorist acts. Instead of surfing the Internet to find out who might have traveled to Cuba,

That is a shorter answer but less diplomatic, Mr. Carragher, and is one that you cannot give. I have no idea how you feel, but you cannot give that answer.

Mr. Newcomb, would you be happy if the Congress this year says to you, you have got 129 people. You are now taking seven of them to enforce this ban on travel by U.S. citizens and we will repeal the ban and give you those seven people back and the $1 million back so that you can use that to track terrorists?

Mr. NEWCOMB. Mr. Chairman, our job is to enforce the law as it is written. If it is promulgated through an Executive Order, that is what we will do. If it is promulgated by the Congress, that is what we will do. If it is certainly following the lead of the President, where he says we are going to step up enforcement, that is what we will do. That is our job and we will do it.

Senator DORGAN. Can I just ask you——

Mr. NEWCOMB. I think my views on this is probably largely irrelevant.

Senator DORGAN. I understand.

Mr. NEWCOMB. I could always use more people to work on all 24 programs, so——

Senator DORGAN. I understand. If the Congress does what I think it may do with respect to repealing the travel ban to Cuba, you will have additional money to deal with the substantial load you have now and burden you have now tracking terrorists, is that not the case?

Mr. NEWCOMB. If that means that we will have seven more people to put on something else, then we will use the seven people on something else and we will move smartly to reallocate resources.

Senator DORGAN. And the central part of your mission, as you testified earlier this morning, is to deal with post-September 11 terrorist issues, and so my assumption is if the Congress would change the law, if we do not change your budget, it frees up $1 million and seven people to be engaged in that activity, would that be correct?

Mr. NEWCOMB. Well, yes, and I also think to repeal positions without decriminalizing or de-civil penalizing the current environment would only add to greater confusion, because not only would, if we did not have the people to deal with what we are responsible for implementing, we would not have the ability to respond to questions, issue licenses, or do the other things that are attendant. So to have a law without the ability to be responsive is counterproductive on all sides.

Senator DORGAN. Is that the way it was prior to 1992?

Mr. NEWCOMB. No. Prior to 1992, there were several things. First of all, Fidel Castro had not moved to open up Cuba. He was still operating on—the Soviets were still supporting Cuba. They were operating largely on the Russian ruble and Cuban peso. A number of steps happened subsequent to 1992 that made it an attractive place to visit. But the key thing is only criminal penalties were

available prior to 1992 and what the Cuban Democracy Act did was give us this very effective enhancement tool, namely civil penalty authority.

Senator DORGAN. But almost no one used the criminal penalties. U.S. Attorneys largely did not do that, and that is why they provided civil fines, is that correct?

Mr. NEWCOMB. That is correct.

Senator DORGAN. Let me thank both of you for appearing. We have two additional witnesses that we want to bring to the table. Mr. Newcomb and Mr. Carragher, thank you very much for being here.

I would like to call former Senator Dennis DeConcini, a former colleague of ours from the State of Arizona, and Ambassador Dennis Hayes, Vice President of the Cuban American National Foundation. If you would please come forward. I appreciate very much your being here.

Senator DeConcini, thank you very much for being with us this morning. I might note that you were chairman of this subcommittee for a good many years. Thank you for being here and why do you not proceed. We will include your full statement as part of the record.

STATEMENT OF HON. DENNIS DeCONCINI, FORMER U.S. SENATOR FROM THE STATE OF ARIZONA, ON BEHALF OF THE ALLIANCE FOR RESPONSIBLE CUBA POLICY

Senator DECONCINI. Mr. Chairman, Senator Dorgan, thank you for inviting us to testify today and thank you for the time you have put in on this, I believe, very important subject when I am well aware of the many different things you have. I have submitted a statement and I am going to summarize it to some extent and ask that perhaps another statement might be submitted later by the Alliance for Responsible Cuba Policy.

I am pleased to testify before you on behalf of that organization, which is a nonprofit organization, nongovernmental organization. I am a founding board member of the Alliance, whose purpose is to educate and change our policy towards the government of Cuba. I am accompanied this morning, although he had to leave just recently, by Albert Fox, the founder and President of the Alliance. We recognize the great demands on your time and so my remarks will be brief and to the point.

You have received testimony from the State Department and Richard Newcomb, the Director of the Office of Foreign Assets Control. Director Newcomb and his staff are the target of criticism leveled against the administration for its policy of enforcement of economic sanctions against the government of Cuba. OFAC is charged with enforcing the laws against the Trading with the Enemy Act and other laws designed to enforce embargoes against those Nations that present a threat to the United States.

Mr. Newcomb and his staff are professional, dedicated, honorable public servants that carry out the law as dictated by Congress and the White House, the administration, as you have so astutely pointed out today, Mr. Chairman. Current laws restrict travel and trade with Cuba. Individuals and organizations that desire to travel to Cuba must secure a license from OFAC to legally travel to Cuba for humanitarian, education, and other purposes.

We all know that many, and as you pointed out, have gone to Cuba through Canada and other countries to avoid the U.S. embargo. Unfortunately, due to the policies dictated by the administration, the same individuals who testified here today are caught in the criminal justice system and the civil justice system as having defied the laws of the United States Government. These citizens are not involved in conspiracies that threaten to undermine our laws or policies. They instead are individuals who have a curiosity to experience Cuba and get to know the citizens. They are on their own educational adventures and are not what we could consider to be criminal or deserving of civil penalties to undermine the laws and the foreign policy of the United States Government.

The fact is that our laws toward Cuba should be changed. Mr. Chairman, sanctions against Cuba have not worked. Having traveled to Cuba during my Senate tenure and extensively with a license from OFAC since my departure from the Senate, I have witnessed firsthand how these sanctions have not and will not bring about the desired change in the government of Cuba, and in particular, the removal of Fidel Castro. Fidel Castro will leave power when he wants to or with his health or he may die in office. Short of military intervention by the United States Government, Mr. Castro will stay for the foreseeable future, in my judgment.

The Cuban people have never had a truly democratic system to elect free and fair leaders. Cuban history is replete with instances of U.S. and European interference. We in the United States have supported corrupt governments in Cuba, even using our military to see that they were imposed on the Cuban people. The present government for the past 40 years is not our dictatorship. When I came to this body, Cuba was a national security threat because of the then-Soviet Union and the close ties Cuba had with the USSR. These days, Cuba is no foreign security threat to the United States or to any other Nation.

In earlier days, voting to keep the embargo on Cuba was a very easy vote, Mr. Chairman. It was a vote to keep the USSR at bay. It was an anti-communist vote and it satisfied a constituency of now-Cuban Americans who have become active in our political system. Many of them lost their homes and businesses as a result of the deceit of the Batista government and the imposition of the Castro government. If that had happened to me, I would be very upset and very mad about it. But notwithstanding the deep differences we have with the Cuban government, our people, our policy of isolation, the embargo, and sanctions clearly have not worked. It is time to make a change.

Mr. Chairman, when I served in the Senate, I was very critical of President Castro and the Cuban government, so much so that the Cuban government would not allow me to visit, and when it finally did, my meeting with President Castro can best be described that we agreed to disagree.

However, in the past several years, I have traveled to Cuba many times with a license. I am now convinced that we must learn to deal with the Cuban government as it is, not as how we wish it to be. In addition, with the Cold War now over, we must bring logic and reason to the U.S.-Cuban relationship.

When I was the former chairman of this subcommittee, I supported funding for OFAC to enforce the Cuban embargo. I approved additional funding for the office and staff in Florida and I believe these activities were important to deter the extortion of those who would harm legitimate Cuban Americans from helping their families in Cuba.

Today is different. Cuba is no longer a national security threat. I do not believe the funding for OFAC operations for Cuba, certainly for enforcement of those laws towards Cuba are necessary. Instead, I believe we should focus our attention on lifting the embargo against Cuba and on normalization.

Thousands of Americans have traveled to Cuba. Many have traveled without a license. Cuba is not a Libya, Iran, North Korea. It is only 90 miles away. Its people are friendly and welcome Americans. Our national interest would best be served to permit Americans to travel to Cuba to have hundreds, not dozens, of exchanges to provide humanitarian assistance. This is what we do with most developing counties and not unreasonable restrictions added on to them by amendments forbidding financing of such purposes as American food and medicine. A change can take place in Cuba if the U.S. would treat Cuba like we treat China and Vietnam, that the chairman has so astutely pointed out today.

PREPARED STATEMENT

Thank you, Mr. Chairman, for the opportunity to testify today on this important matter. We respectfully ask the committee to devote its time to lifting the travel ban towards Cuba and to find a way to constructively engage the Cuban government in a manner that would lead to the reestablishment of diplomatic relations between our two countries.

Senator DORGAN. Senator DeConcini, thank you very much.

[The statement follows:]

PREPARED STATEMENT OF SENATOR DENNIS DECONCINI

Dear Mr. Chairman and members of the Subcommittee on Treasury and General Government,

Thank you for inviting the Alliance for Responsible Cuba Policy to present testimony this morning regarding the Treasury Department's Office of Foreign Assets Control licensing procedures. The Alliance was created in late 1998 to foster better political, economic, and cultural relationships between Cuba and the United States. It is a non-partisan, non-profit 501 (c) (6) organization. I am accompanied this morning by Albert A. Fox Jr., founder and president of the Alliance for Responsible Cuba Policy. Al, as a former Senate staffer, and I recognize the great demands on your time, so we will get right to the point. At the appropriate time if you have any questions, Al and I will be delighted to answer them in a forthright manner.

Let me briefly make two points regarding OFAC and its licensing procedures. First, Director R. Richard Newcomb and his staff receive criticism from time to time from various quarters, which we believe to be totally unjustified. Mr. Newcomb and his staff are dedicated, honorable, and talented public servants. I say that with great confidence for I observed them from the inside when I chaired this very subcommittee or was the ranking member for 12 years. I have now observed them from the outside as well, as one of the principal founders of the Alliance for Responsible Cuba Policy, which deals with OFAC on a regular basis.

Everyone knows the dilemma that Mr. Newcomb and his staff face on a daily basis regarding licenses for Cuba, but no one wants to admit it publicly. OFAC and its staff face pressures that very few other government agencies face. We all know that Cuba is not a foreign policy matter for the United States any longer. Cuba is a political domestic matter for the United States. Mr. Newcomb's office is pressured by the White House, the National Security Council, the State Department, Con-

gress, and by those who support the blockade toward Cuba, to tighten the screws on licensing procedures, yet Congress passes laws and regulations allowing for Americans to travel legally to Cuba under certain circumstances. In short, OFAC is criticized by those who support the blockade when a license is granted and equally criticized by those opposing the blockade when a license is denied.

The fact is that OFAC does not have discretion to grant licenses regarding travel to Cuba to individuals and groups they personally like and/or support. Rightly or wrongly, they must adhere to specific laws as prescribed by Congress. In our opinion OFAC obeys the letter and the spirit of the law authorizing them to grant licenses for travel to Cuba.

It is difficult to defend a decision on a license application or to defend the enforcement of a penalty on some of the cases you have before you today. We believe they are the exceptions and not the rule. It is appropriate for this committee to ask questions on resources and procedures. Again, it is important is to realize that the administration of congressional statutory language does require following the law and does not permit the administrators to be arbitrary, as some claim.

The solution is to repeal the law that denies Americans to travel freely to Cuba. The blockade against Cuba has not worked. Having traveled to Cuba during my Senate term and extensively since leaving the Senate I have witnessed first hand how these sanctions have not and will not bring about the desired changes in the government of Cuba and in particular the removal of President Fidel Castro. He will leave office when he wants to or when he cannot serve because of health reasons or dying in office. Mr. Chairman, there is absolutely no evidence of any significant dissident movement against President Castro or his government within Cuba. Those are the facts. In my judgment, short of U.S. military action, Mr. Castro will remain the leader of Cuba for the foreseeable future. I wish that were not the case, for the Cuban people have never had truly democratic free and fair elected leaders. Cuban history is replete with instances of U.S. and European interference. In the past, we have supported corrupt governments in Cuba, even using our military, when we felt the need to do so. When I came to this body Cuba was indeed a national security threat because of the former Soviet Union and the close ties Cuba had with the USSR. So our foreign policy toward Cuba made sense then. But today, Cuba is no security threat to the U.S. or to any other nation. In those days, voting to keep the blockade on Cuba was a very easy vote. It was a vote to keep the USSR at bay, it was an anti-communist vote, and it satisfied a constituency of those who are now Cuban Americans, of whom some have become active in our political system. Many of them lost their homes and businesses as a result of the overthrow of the Fulgencio Batista dictatorship. Many of them of course are driven by nationalistic pride and are bent on retribution. Not withstanding the deep differences, and they are many, we have with the Cuban government, our policy of isolation, the embargo and sanctions clearly have not worked. It is long past time to make a change. Thousands of Americans traveled to Cuba last year alone without a license approved by OFAC. Cuba is not some far away place like Libya, Iran or North Korea; it only ninety miles away from Florida's most southern point. The people are friendly and they want full relations with us—even the Cuban government wants full and friendly relations with us. Our national interest would best be served by permitting Americans to travel to Cuba to have hundreds, not dozens, of exchanges, to have truly humanitarian assistance, like we have with most other developing countries, not unreasonably restricted by amendments forbidding financing of such purchases of American food and medicine. Why are we afraid of allowing America's most precious asse—its citizens—to travel to Cuba? Maybe a change will take place in Cuba if the U.S. would treat Cuba like the U.S. treats China, Vietnam and the other nations we have disagreements with.

Further Mr. Chairman, when I served in the Senate, no one was more critical of President Fidel Castro and the Cuban government than me. So much so, that the Cuban government would not allow me to visit Cuba and when they finally did, my meeting with President Castro can best be described by saying that we "strongly agreed to strongly disagree." However, as referred to above, in the last 7 years, I have traveled to Cuba seven times and I am now convinced that we must learn to deal with the Cuban government, as it is, not how we wish it to be. Certainly with the Cold War over, we should bring logic and reason to United State-Cuba relations.

The second point I would like to make is that when I was chairman of the Subcommittee on Treasury and General Government, I proposed and supported the creation of an OFAC office in Miami, Florida. I believed at the time it was a prudent expenditure of taxpayers' money and vital in enhancing U.S.-Cuba relations. Today, U.S.-Cuba relations have become a political issue and no longer is Cuba a national security threat, no longer is Cuba exporting military adventurism and communist revolution. Cuba is not a bit player, if a player at all in the international drug car-

tel, which I believe is just as great a national security threat as terrorism. This office, which this committee originally funded when I was Chairman, is not necessary any longer in my judgment. It may employ a number of Americans; which I realize are jobs but jobs at the taxpayers' expense. Yes the Miami office of OFAC handles some paper work but I firmly believe OFAC in main Treasury can handle the effects of such a closure. OFAC may need more personnel but I do not believe it justifies an office in Miami. As I have said because of the change of our relationship from one of foreign relations to one of domestic relations. The alliance recommends the closing of the OFAC Miami office and the transfer of the office's functions back to Washington, DC.

In closing, we respectfully ask the committee to devote its time to lifting the travel ban toward Cuba and to find a way to constructively engage the Cuban government in a manner that would lead to the re-establishment of diplomatic relations between Cuba and the United States. The people of both countries have far too many things in common to keep us apart, just because of domestic political considerations. Mr. Chairman, the time to act is now, for there is always going to be a "legitimate reason" to postpone enhancing U.S.-Cuba relations. There is always going to be a presidential election, congressional election, Florida gubernatorial election, or other excuses for not acting.

We will submit for the record a more detailed statement and information regarding the Alliance for Responsible Cuba Policy.

Senator DORGAN. Next, we will hear from Ambassador Dennis Hayes. Mr. Ambassador?

STATEMENT OF AMBASSADOR DENNIS K. HAYES, VICE PRESIDENT, CUBAN AMERICAN NATIONAL FOUNDATION

Mr. HAYES. Thank you, Mr. Chairman. With your permission, I would like to submit my statement for the record and perhaps summarize it and perhaps attempt to answer the unanswerable that you put forward a moment or two ago.

Senator DORGAN. Without objection.

Mr. HAYES. I would like to note on behalf of the Foundation that we do, in fact, support lawful travel to Cuba and we do see it as a means of increasing communication and support for the Cuban people. One thing that has been left out of all the discussions up to this point, I believe, is, in fact, the status of the Cuban people at this time and how the Castro regime attempts to limit contact between Americans and other foreigners and the Cuban people themselves. So I would like to talk just very briefly about how that process works and how Americans play into it and perhaps then how OFAC connects into that.

Perhaps the most important thing to remember is that the Castro government works very hard to see to it that there is not meaningful interaction between foreigners and Cubans. There is a process which is known on the island as the tourist apartheid. Under this, Cuban citizens are denied entry into resort areas and into hotels and this effectively presents a bar for meaningful contact.

There also are a whole series of further restrictions. It is, in fact—recently, laws were passed in Cuba which makes it a criminal offense for Cubans and foreigners to discuss sensitive issues, whether that be medical conditions on the island or the condition of democracy and free speech advocates. You may remember that two Czech citizens, one of them a member of parliament, were imprisoned for over a month for violating this ban.

It is also important to remember that the tourist industry itself is built to funnel money into the Castro regime. This is done through a variety of ways, including the illegal confiscation of wages. It is done through a process whereby unionization is not

just illegal but can result in firings, beatings, and imprisonment. It is done through a process where there is blatant racial discrimination, where Cubans of black origin are systematically denied positions in the tourist industry. It also builds, unfortunately, regrettably, very much in the early days and continuing until now through a basis of prostitution as a lure for foreign tourists.

And finally, I would note, as the Senator noted, that when we talk about free trade to Cuba, we have to remember that there are two pieces to that. It is not simply the United States that has to authorize travel. The Cuban government also does and they engage in a process whereby they deny travel authorization to anyone that they disapprove of, whether that be because of their political views, family ties, or what have you.

So one of the concerns that we have is that when we discuss travel, we always do it in a unilateral fashion rather than looking at both sides of the equation. I think that we need to be less timid. We need to say that there are important issues here of free speech and of free contact and it should not just be that we give things away, asking nothing in return, when history has shown that is exactly what we will get, nothing in return.

Mr. Chairman, one or two other issue that came up in the conversation here. With respect to the threat of Cuba, I will note that this is a regime with a long history of anti-Americanism, that a U.S. court has determined that the state acted deliberately to kill American citizens in the "Brother to the Rescue" shootdown, that a high-ranking minister of government has been identified as a man who tortured and killed Americans in Vietnam, that the government consistently spies against us and provides a home for an alphabet soup of terrorist groups.

So all in all, with respect to OFAC, we believe that it is important that there be transparent regulations, that they be applied without fear of favor, if you will. We do encourage those efforts which lead to increased contact. Dr. Gilderbloom's program, for instance, as described, is one that I would think that we would support. I do not know all the details, but certainly as it was described, it has the requisite points to it.

PREPARED STATEMENT

So, all in all, again, we would hope that OFAC would continue to enforce effectively with the dividing line, that those actions which provide comfort and support for regime should be opposed. Those actions which help and support the Cuban people should be encouraged.

Thank you, Mr. Chairman.

Senator DORGAN. Mr. Ambassador, thank you very much.

[The statement follows:]

PREPARED STATEMENT OF AMBASSADOR DENNIS K. HAYES

Thank you Mr. Chairman, I appreciate this opportunity to appear before you and the committee to discuss the enforcement of travel—regulations with respect to Cuba.

The Cuban American National Foundation supports lawful travel to Cuba. Lawful travel to Cuba may be undertaken for a very wide variety of purposes, including visits with family members, work with humanitarian and religious groups, academic research or the pursuit of news stories. Such travel can help provide a flow of infor-

mation to and from the Island and can—if undertaken for such a purpose—bring comfort and support to the Cuban people as they struggle to free themselves from over four decades of repressive, authoritarian rule. The Foundation strongly opposes, however, unrestricted tourist and business travel to Cuba. Such travel strengthens the regime and legitimizes the violation of the rights of the eleven million citizens of Cuba who are not part of the ruling elite. While we understand that many of the people who seek to engage in such travel have good intentions, good intentions do not make up for the misery and degradation their actions cause. We support the efforts of the Office of Foreign Asset Control to enforce the law. We believe the American and Cuban people alike are best served by a transparent, predicable, and vigorous application of the law. In a world of limited resources, we encourage OFAC to give highest priority to investigating and prosecuting those individuals who have made a business out of breaking the law and those individuals who most blatantly engage in abusing the Cuban people.

Why is tourist travel a bad thing?—The Foundation opposes tourist travel because, as presently practiced, such travel hurts rather than helps the people of Cuba. Cuba is a totalitarian regime that severely restricts the rights of speech, assembly, enterprise, and even the practice of religion. Tourist travel is structured specifically to limit meaningful contact between Cubans and foreigners. Revenues from tourism flow to the most repressive elements of the regime. Cuba has encouraged tourism from other countries for over a decade now and the results are sadly clear—the vast majority of tourists become complicit in the exploitation of the Cuban people. Some specific concerns:

Tourist apartheid.—The Dutch religious group, Pax Christi, recently reported: "Cubans are not allowed to enjoy the new tourist industry because it has become de facto the sole purview of foreigners. Through a series of physical restrictions imposed on Cubans, the government is able to maintain what is known as "tourist apartheid". As is generally known, Cubans are not allowed to visit most of the tourist areas or even enter a hotel; and if they do, they must be in the company of a foreigner. Cubans are even gradually losing their beaches and beautiful reefs because the Government continues to discriminate against them.—In private, Cubans repeatedly expressed their anger at being treated like second-class citizens in their own country."

Racial Discrimination.—Cuba's tourist industry is built on blatant racial discrimination. Cubans of African decent are routinely denied employment in tourist industry—the only opportunity many Cubans have to earn dollars. As noted by Washington Post columnist William Raspberry in a recent story, "I saw hardly any brown-skinned or black Cubans running anything not as managers or ministers, or maitre d's, not even as cashiers, clerks or hotel maids."

Illegal confiscation of wages.—Cuban workers at tourist resorts are employed only through the State Employment Agency. A foreign company therefore pays the Cuban government directly for the services of the worker. And while the Cuban government is paid in hard currency such as U.S. dollars, the Cuban worker is given Cuban pesos at an artificial exchange rate. Thus, over 95 percent of the worker's wages are retained by the regime. This practice is a direct violation of International Labor Organization (ILO) standards. The labor practices of foreign joint ventures have recently been declared "exploitative" by the Infernational Confederation of Trade Unions (ICFTU) and the International Regional Organization of Workers (ORIT).

Prostitution.—Much of Cuban tourism is built on prostitution, particularly teenaged prostitution, and the exploitation of women. In fact, Havana has become known as the "Bangkok of the Caribbean." Fidel Castro has boasted to Cuba's rubber-stamp National Assembly that "highly educated" "jineteras" (prostitutes) have low rates of AIDS and, therefore, "there is no tourism healthier than Cuba's." (The New Republic, July 2000)

Criminalization of free discussion.—The Castro regime recently passed legislation criminalizing discussions between Cubans and foreigners on "sensitive" issues. Two Czechs, one a Member of Parliament, were imprisoned for a month last year for speaking with dissidents. A U.S. citizen was held at State Security Headquarters for three weeks for taking children's books to an independent library.

Confiscated Property.—Many Cuban tourism facilities are built on property seized from American and other owners without compensation. In a further flouting of international law, those facilities are often operated in conjunction with a foreign partner, who reaps profits from that stolen American property. Further, tourist resorts in Cuba are built without regard to the environmental damage caused, often destroying the fragile ecosystems of Cuban coastlines.

ENFORCEMENT OF TRAVEL REGULATIONS

The Foundation supports the efforts of the Treasury Department and the Office of Foreign Assets Control (OFAC) to enforce the law. We appreciate how difficult it is to gather information in a hostile regime and to enforce regulations that some Americans—sincerely, if unwisely—are prepared to violate.

The case for enforcing restrictions on unlawful travel to Cuba is compelling. We encourage OFAC to act in a transparent, consistent, and vigorous manner, without fear or favor. Everyone should be held to the standards of the law. Should a Cuban American violate the law, he or she should be held every bit as accountable as any other American.

In a world of competing priorities, we encourage OFAC to give special priority to examining the actions of those individuals and companies that have made a business of violating U.S. law and degrading the Cuban people. A cursory web search will reveal numerous companies that provide specific advise on how to break the law. Some businesses openly offer to make all arrangements for illegal travel—for a price. On company in Texas brags it can facilitate business investment in Cuba because they "already know the most important Cubans." On any given weekend, dozens of American boats can be found at the Marina Hemingway, their owners and crews engaged in illegal transactions and often smuggling contraband back to the United States. Several popular magazines advertise Cuban products that can be paid for with U.S. credit cards and shipped anywhere in the United States from a third country. On occasion, there are stories in the press that highlight illegal activity, such as a recent melee involving a well-known heavyweight boxer. It is crucial that action in such cases be taken, and be seen to be taken, not because of who someone is or isn't, but because no one is above the law. We strongly urge OFAC to be aggressive in prosecuting such cases.

In a related area, we encourage the Administration and the Congress to make available sufficient resources to bring cases before a judge in a timely manner.

Mr. Chairman, I am confident the day will come when the Cuban people are able to welcome visitors to their shores freely and proudly as equals, not slaves. Until that time, to abandon our travel regulations would not only weaken respect for our laws, but would also give de facto recognition to the dehumanizing efforts of the Castro regime. I am proud of America for being the one nation that puts human dignity above cheap package tours. We owe it to the Cuban people to insist that their rights and dignity not be traded away for a handful of sand. Thank you.

Senator DORGAN. Can you, for the record, describe your background for us? I just did not have it in my record this morning.

Mr. HAYES. I am a retired Foreign Service Officer. I had Mr. Carragher's job. I was Coordinator for Cuban Affairs in the 1990s. I was Ambassador to the Republic of Surinam. I was also President of the Foreign Service Union at one point, so I take the union issues to heart.

Senator DORGAN. Thank you very much.

Mr. HAYES. Yes, sir.

Senator DORGAN. Let me ask a couple of questions of both of you, if I might. Ambassador Hayes, you indicated that the Cuban government bans contact with tourists by average Cubans. I have been to Cuba once on an official visit and I found that, walking around, I could talk to anybody about anything at any time.

The only denial I received came when I wanted to go to a prison and interview an economist who had been imprisoned. Outside of that refusal, which I took directly to Fidel Castro, I was free to talk to anybody, anywhere, at any time. In fact, we had some meetings with dissidents and they were highly critical of the Castro regime and demonstrably so. So I did not get the same sense that there is a circumstance where tourists do not have the opportunity to interact with Cubans.

Now, when you talk about this, you talk about it in the context of hotels, and it may well be that these are gated areas, where you go to a hotel on the beach somewhere and you are not going to

have a lot of contact. But if you go to downtown Havana and go to the Floridita or wherever you go, you can talk with anybody about any subject. Can you describe that a little better for us?

Mr. HAYES. Certainly, Senator. There are a couple pieces to that. One is those physical barriers between individual Cubans and visitors, which are more evident, as you said, in the tourist resort areas. Havana by its nature being a city, that does not apply as much until, of course, you would like someone to come back and visit or have a meal at a hotel.

But again, remember that the restrictions are not just on you, they are very much on the Cuban people, and with a system in place where basically the actions of people are monitored, if not 100 percent, quite efficiently and effectively, everyone who you talk to knows that the conversation that you had is one that is measured.

I will note, for instance, in meeting with dissidents that one of the more prominent economists, Marta de Matrice, who met with President Fox, was detained, strip searched, held out of her home. Her home was fumigated with some kind of poison against her wishes. Why? Perhaps because she spoke out on exactly those issues that you mentioned.

Senator DORGAN. Senator DeConcini, what has been your experience?

Senator DECONCINI. Mr. Chairman, there is no question, and I agree with the Ambassador, there is still a tremendous amount of tyranny, as there is in any communist country, whether it is Cuba or China. You do not have the freedoms there. Nobody pretends that they do or would argue that that is a good system.

But my experience traveling there is like yours. Having met with Fidel Castro, having met with those who oppose him, those who have been persecuted and put in jail, and having absolute free contact with anybody I have wanted to see except, as you, someone who was in prison. That was the only person I was denied to there. The U.S. Interests Section deserves a great deal of credit for that because they helped organize those.

Yes, the Cuban government, I suspect, does not like it, and sometimes they will discourage it, so I am told, but never to me, and I have had that experience not only in Havana, which is a large city, as the Ambassador points out, and more difficult to constrain, but I have had that in many areas, Santiago and Del Rio, the tobacco area, being able to walk through the villages, walk into the tobacco farms, talk to the people who are digging in the fields, have a cup of coffee with one of them later in their house with no government official there. Now, maybe there were listening devices, that this farmer was going to convey something of national security to me, but we know that is not true.

So it just does not hold up. I think one of the problems that many who take the very strong position, and I respect the Ambassador immensely, they have not traveled there. They have not witnessed it and they do not want to really understand that the Cuban people are the ones that are hurt by our policies and not the one that we would like to hurt, perhaps.

Senator DORGAN. It seems to me the question for our country, aside from the narrower question today of OFAC resources and enforcement, the question for our country is, what set of policies will

best implement the removal of the Castro government and move Cuba towards a free opportunity to select their own government by the Cuban people.

I have traveled in Vietnam, I have traveled in China, I have traveled in Cuba. Frankly, I see very little discernable difference in traveling around those countries. They are all communist countries.

As I said when I started this hearing, it is not my intent ever to be supportive of a regime like Fidel Castro's regime. The Cuban people ought to have the right to choose their government. But there comes a time when the American policy has to be reviewed. If you have a policy in place for 40 years and you are not accomplishing your objectives, then it seems to me you might evaluate whether that policy is working. Fidel Castro has been in office during the term of ten U.S. Presidents. That might persuade someone to say that our Cuba policy is not working.

My own observation—and I would like, Mr. Ambassador, your observation about it—my own observation is, having gone to Cuba, and especially China, on these issues, is that those who talk about trying to open the system with travel and free markets and so on, that the quickest way to explode a government that excuses its dismal economy on the U.S. embargo, the quickest way to dismantle that government is to essentially say this is open to travel and tourism and trade. My expectation is that that would hasten the demise of the current government in Cuba. Give me your impression of that, Mr. Ambassador.

Mr. HAYES. Yes, sir. I will note the fact that we have had ten Presidents and there has only been one in Cuba is a reflection of the fact that we have a peaceful transfer of power and Cuba does not have that possibility.

Senator DORGAN. Right.

Mr. HAYES. This is clearly a very difficult question because I accept that there are a lot of people of good will who come to this question and honestly disagree on how best to achieve a given result, which, as you said, is the removal of the Castro regime and allowing the Cuban people to have their own say in what future they want, and that, of course, is the bottom line.

I am skeptical that the actions which are proposed, which is a unilateral lifting of our embargo, will, in fact, have the effect that is desired in Cuba. I look at what the Canadians have done over the past 10 years and I think, again, they went in with very good intentions to cause positive reform, and if you talk to the Canadians now, they will tell you that it did not work.

Senator DORGAN. But let me just ask a quick question. Do you believe that action had an impact on China?

Mr. HAYES. I am—I like to think of myself as consistent in these policies. I do not agree with our China policy. I think we trade the heroes of Tiananmen for cheap Happy Meal toys, but that is a separate question.

I do think that, on the other hand, that when you can engage someone and get an engagement back, then it is always worth investigating and pursuing. A diplomat by training, I try to overcome that conditioning, but there it is.

I do think that in the case of Cuba, if, for instance, Cuba were to lift the ban to allow citizens to have free access and free contact with tourists, if they allowed foreign companies to hire Cuban workers and pay them directly, if they did not practice the racial discrimination that they do, then the equation changes and I then think that it would be appropriate for us to take a look at it.

Senator DORGAN. Actually, consistency is an interesting thing to hear in a Senate hearing, so congratulations.

I understand the point you make. It is one that I do not share, but let me ask, and I would ask both of you, about the issue of agriculture, that is, food and medicine. Do either of you believe that it is ever appropriate to use food and medicine as weapons in trade policy or weapons in economic policy designed to punish a country? The reason I ask the question is we are having quite a debate about that here in Congress, as well. Senator DeConcini, would you like to answer that?

Senator DECONCINI. Mr. Chairman, it has been my sad experience, I guess, to witness that firsthand here, having served here for three terms, where it is well intended when you impose those kind of sanctions and prohibitions, but actually, even though the regime you are trying to topple benefits when the flow of that food and medicine goes there, for most examples that I can think of, it is impossible to keep it from enhancing the ability of the people, in this case, Cuba, from receiving it.

I visited with Cardinal Ortega there and with Caritas, the organization there that attempts to do this, and they will tell you, quite frankly, the people who need the food are getting the food. Now, it does not mean that some people in the Castro regime or the army are not also getting some of it. That happened in Ethiopia. That happened in Somalia, where we had tremendous non-government efforts but without the prohibitions. I think it is a lesson well learned.

Your point as to China, and I appreciate the consistency of our friend here, the Ambassador, I wish our policy had not changed so dramatically to China, but it has and the reality is it has worked. This administration understands it works. The President is going to visit there again. More capitalism, more small businesses are going there, and why? I think it is because of the tremendous influence that Western Nations, and particularly the United States, has there.

I am not a wagering man, Mr. Chairman, but I can almost guarantee you from my experience there of over eight travels to Cuba that if half a million or a million Americans travel there over a 12-month period of time and spend $100 or $200 million, Cuba would be substantially changed and then that government could not withstand just the amount of information that would be brought in and made accessible to Cubans. You cannot police that, even in a communist society, in my judgment.

Senator DORGAN. Mr. Ambassador.

Mr. HAYES. Let me note this is my personal view as opposed to the organization I represent and that, in my feeling, the only time that you should restrict food and medicine is when it is clear that it is used in such a way that it increases repression or, rather, the

control of a State over a population, and I think that is a question that is not yet fully answered with respect to Cuba, so in that case.

Sir, I would also note that throughout my career, I worked very hard to encourage American exports, particularly agricultural experts, to the countries where I served and my experience was not just that farmers wanted to sell agricultural products but that they wanted to get paid for selling agricultural products, which, of course, brings us to another issue, which is that it is one thing if Cuba wants to buy American products. It is another if they want to simply get them without paying.

Senator DORGAN. You would not expect that because we have had an embargo on food to Cuba—now, that was lifted somewhat, except you cannot even use private financing—you would not expect that Fidel Castro ever would have missed a meal because of our action, would you?

Mr. HAYES. No, sir.

PREPARED STATEMENT

Senator DORGAN. Let me do this. Mr. Frank Calzon from the Center for Free Cuba has sent me a letter. I will ask Mr. Calzon if he wishes to submit written testimony for the formal hearing record. We were not able to have him testify.

[The statement follows:]

PREPARED STATEMENT OF FRANK CALZON, CENTER FOR A FREE CUBA

This testimony is presented on behalf of the Center For A Free Cuba, an independent, nonprofit, nonpartisan organization promoting human rights and a peaceful transition to democracy in Cuba. The Center participates in the national debate on Cuba, but does not take a position either for or against legislation pending before Congress.

I am grateful to Chairman Byron L. Dorgan for this opportunity to present our views about the U.S. ban on travel to Cuba and other aspects of United States policy toward the island. A number of organizations and individuals are urging Congress to lift the ban on travel to Cuba, claiming that the travel restrictions unnecessarily curtail civil liberties and that they can no longer be defended on the grounds of national security. At the same time, some of these advocates assert that lifting U.S. travel restrictions would help the people of Cuba and hasten the end of the 42-year-old Castro dictatorship.

While we beg to differ, we urge the Congress to look beyond the opinions bandied about and to review the facts carefully. It would be ironic if in the name of advancing tourist travel, a leader of anti-American violence around the world, a government on the U.S. Department of State's list of sponsors of terrorism, and one of the world's leading violators of human rights were to be bolstered by an infusion of American-tourist dollars. A reappraisal of U.S. Cuba policy by the Administration and Congress must take into account many issues; the travel ban is just one. Among issues requiring urgent review are:

—The lack of reciprocity in the operations of the U.S. Interests Sections in Havana and Cuba's Interests Section in Washington;

—A U.S. District Court's sentencing in December of Cuban spies charged with trying to penetrate U.S. military bases (two to life in prison, one to 15 years, and others to lesser sentences);

—The September 2001 arrest of Ana Belen Montes, a veteran Defense Intelligence Agency analyst, charged with spying for Havana. According to press reports Ms. Montes duties included providing the Pentagon information on the military capabilities of the Castro government;

—The revelation in a book by the former deputy director of the Soviet Union's program of biochemical weapons that Soviet officers were convinced "Cuba had an active biological weapons program." (Ken Alibeck, "Biohazard: The Chilling True Story of the Largest Covert Biological Weapons Program in the World, Random House, 2000; pages 273–277);

—The torturing of American servicemen (some of whom died) by Fidel Castro's intelligence officers. See Sen. John McCain's Faith of our Fathers (Random House, 1999), and Honor Bound: American Prisoners of War in Southeast Asia 1961–1973, published by the Naval Institute Press, Annapolis, 1999; and

—The statement by Fidel Castro at Teheran University last summer that America was weak, and Iran and Cuba could bring the United States "to its knees."

Those examples of the Cuban government's enmity are not, of course, the subject of this hearing. The focus of this hearing is U.S. restrictions on travel to Cuba and, to some extent, the sale of U.S. agricultural products to the island. Allow me to discuss these two issues in the context of advocating a prudent, pro-active policy designed to encourage a transition to a democratic and prosperous Cuba. I believe there are at least three questions that need to be answer:

—Does the Cuba-travel ban violate the U.S. Constitution?

—Will subsidized trade with Cuba help the American farmer or hurt the U.S. taxpayer?

—Would the Cuban people benefit from American tourism?

DOES THE CUBA TRAVEL BAN VIOLATE THE U.S. CONSTITUTION

First, it is simply wrong to suggest that Cuban-travel restrictions are inconsistent with the exercise of rights guaranteed by the U.S. Constitution. The United States Supreme Court squarely addressed the issue in *Regan* v. *Wald*. The Court noted then that a citizen's right to travel is infringed when, for example, the government prevents him/her from traveling because of his/her political beliefs. The Court in Regan made clear, however, that the executive branch may prohibit its citizens, irrespective of political conviction, to travel to Cuba or any other nation because of foreign-policy considerations. 468 U.S. at 241–42. In so doing, the Court specifically rejected suggestions that changes in the "geopolitical landscape" would permit the judiciary to second-guess the executive branch's determinations about what foreign policy justifies a travel ban.

Some apparently feel that only another Cuban missile crisis would make restrictions on travel to Cuba constitutional. They argue that there is no "emergency" at the present time and that the relations between Cuba and the United States are subject to "only the normal' tensions inherent in contemporary international affairs." The holding [in prior Supreme Court decisions], however, was not tied to an independent foreign-policy analysis by the Court. Matters relating "to the conduct of foreign relations . . . are so exclusively entrusted to the political branches of government as to be largely immune from judicial inquiry or interference."

This clear statement belies any suggestion that changes in the "geopolitical landscape" make unconstitutional today what was constitutional in 1984. Despite "changing conditions," since Regan, every court has rejected the invitation to find the executive branch's policy on the Cuba travel restrictions unconstitutional. e.g., *U.S.* v. *Plummer*, 221 F.3d 1298, 1309–10 (11 Cir. 2000); *Freedom to Travel* v. *Newcomb*, 82 F. 3d 1431, 1439 (9th Cir. 1996). There simply is no responsible legal basis for the suggestion that the Cuba travel ban violates the Constitution.

Other "legal" arguments advanced for repeal are no more persuasive. It is absurd to suggest that travel restrictions should be lifted because those who violate them don't know about them. A defendant showing he/she was unaware of a law might reasonably expect a court to consider that before deciding what punishment to impose. It is not grounds for a court to repeal a law that has been violated. A second argument, that people "intent" on visiting Cuba will necessarily violate the law, seems equally illogical. Congress would not repeal anti-drug legislation because drug addicts are "intent" on smoking dope. Even if one assumes bureaucratic failings in the Treasury Department's Office of Assets Control and Customs, it would not be a basis for repeal. If such reasoning were accepted, the Internal Revenue Code also would be imperiled.

The truth is that there are no "legal" arguments for repeal of the Cuban travel restrictions. Such arguments are "smoke" intended to obscure a policy debate. It is telling that those urging a change of policy feel it necessary to try so hard to obscure their intent.

WILL SUBSIDIZED TRADE WITH CUBA HELP THE AMERICAN FARMER OR HURT THE U.S. TAXPAYER

Fidel Castro's most persistent trait since assuming power in 1959 has been anti-Americanism. Now he says he wants to help American farmers and trade with the United States. By Castro's reckoning, selling grain and other commodities to Cuba will greatly benefit American farmers.

The American economy today is grappling with the Enron fiasco, which can be attributed to the company's manipulation of its fiscal data, and the unwillingness of Executive branch regulators and Congressional policy makers to ask tough questions. It is up to Congress today to ask whether profits from trade with Cuba aren't another mirage. And whether American taxpayers won't take another hit if Fidel Castro's campaign to win credits, export insurance and export guarantees succeeds? Will gullible Americans also be swindled by Castro?

Harvard scholar and former U.S. Sen. Daniel Patrick Moynihan once said that "we are all entitled to our own opinions, but not to our own facts." What are the facts?

Say what you will about the ineffectiveness of the U.S. embargo, one of the best-kept secrets of the embargo is that it has saved U.S. taxpayers millions. Because of the embargo American banks aren't part of the consortium of creditors known as "the Paris Club" waiting to be paid what they're owed by Havana. If they were, you and I both know they would be pressing Congress to find a way for U.S. taxpayers to cover their losses in Cuba.

Since 1986 Castro's Western creditors (including Canada, France, and Spain) have sought to recover some part of their $10 billion in loans to Cuba. Havana refuses even to repay Moscow's larger loans, insisting that its debt was to the Soviet Union, "a country that no longer exists."

American agribusiness believes there are huge profits to be made by trading with Havana. It believes foreign policy considerations should not prevent trade even if strengthening regimes like Libya, Iraq and Cuba might someday put the lives of U.S. servicemen at risk. Providing trade benefits to America's enemies, especially those in the State Department's list of terrorist nations makes, as much sense as the sale of U.S. scrap metal and bauxite to Japan in the 1930's. Some of those materials were used to build up the Japanese military, leading to the attack on Pearl Harbor.

In June 2000, Congress lifted sanctions on sales of agricultural products and medicine to Cuba. For more than a year, there were no sales. In the aftermath of a devastating hurricane in November of 2001, the Bush Administration offered humanitarian assistance to Cuba. Instead of promptly accepting the assistance and thanking the United States, Castro turned the offer into a public-relations stunt, insisting Cuba would buy $30 million in commodities from the United States and initiating a political and public relations campaign to win U.S. credits and export insurance for future "sales."

The Castro government, however, is broke. It suspended payments on foreign debt in 1986. And although Castro has managed to reschedule some debts, he continues to have difficulty paying his creditors. It is tragic that Castro's sales pitch are accepted at face value without checking available economic data, and would be worse if U.S. taxpayers wind up encumbered with the risk of making good on subsidized credits (to Castro) and export insurance (to American corporate interests). As AmCham Cuba, (The American Chamber of Commerce of Cuba in the United States) reports in its February 2002 newsletter:

"Cuba's economic woes continue to mount as a result of being especially hard hit by the worldwide economic slow down and the fall-off in international travel after the September 11 attacks. Tourism, Cuba's most important economic sector has declined sharply. Hotel occupancy is down at least 25 percent in Havana, 40 percent in Varadero—Cuba's second largest source of foreign exchange, expatriate remittances are down due to the downturn in the U.S. Removal of Russian surveillance facilities cost the Cuban economy $200 million in Russian rent. Vice President Carlos Lage has cited the hard blow' by a fall in world prices for Cuba's commodity exports such as sugar and nickel."

In the 1960s, when Castro expropriated U.S. and Cuban businesses, Washington banned all trade with Cuba. Castro now lures businessmen by telling them that they are "losing business." But according to a recent U.S. International Trade Commission report, "U.S. sanctions with respect to Cuba [have] had minimal overall historical impact on the U.S. economy" and "even with massive economic assistance from the Soviet Union, Cuba remained a small global market relative to other Latin American countries."

The commission estimated "that U.S. exports to Cuba in the absence of sanctions, based on average 1996–98 trade data, would have been less than 0.5 percent of total U.S. exports." And that "estimated U.S. imports from Cuba . . . excluding sugar (U.S. sugar imports are government regulated) would have been approximately $69 million to $146 million annually, or less than 0.5 percent of total U.S. imports."

The report asserts, "U.S. wheat exports to Cuba could total between $32 million and $52 million annually, about 1 percent of recent U.S. wheat exports."

Economic data about Cuba is difficult to obtain. But consider this: During the year 2000 France withheld a shipment of grain due to Castro's inability to pay for earlier transactions and canceled $160 million in new credits to Havana. In early 2001, Chile was attempting to establish "a payment plan" for a $20-million debt for mackerel shipped the previous year. South Africa, according to The Johannesburg Sunday Times was "frustrated" by Havana's failure to settle a $13-million debt, and Pretoria's Trade and Industry Ministry refused to approve credit guarantees to Cuba. Last year (2001), Thailand also refused to provide export insurance, resulting in the cancellation of rice sales to the island worth millions of dollars.

According to the commission report, rice exports to Cuba would be worth between $40 million and $59 million, increasing the value of U.S. rice exports by 4 to 6 percent: "U.S. exporters would be highly competitive with current suppliers." But the report cautions that Castro's trade decisions are based on politics, not on economics. Castro is unlikely to give the Americans the market share that he provides his ideological allies: China and Vietnam.

Unfortunately, Castro's trade partners often become apologists for the regime, fearing to say anything that endangers their investments in Cuba. They have found out the hard way what happens when Castro feels insulted by demands to pay.

Louisiana rice and Illinois wheat producers should stop assuming that "selling" to Havana is synonymous with getting paid. U.S. taxpayers should be wary.

Castro desperately needs credits and subsidies. Washington is under pressure from agri-business to provide credits and subsidies. If all of us accept estimates that U.S. trade with Cuba might rise to $100 million per year, then five years from now American taxpayers will have guaranteed $500 million in credits and insurance. That's real money, everywhere.

Before extending credit to Castro, Americans should visit New York City and watch how three-card monte is played on some street corners. The dealer shows three cards, shuffles them, places them face down and invites spectators to bet they can identify one. In this game, the gambler voluntarily takes his chances. Where trade with Castro is concerned, it's the U.S. taxpayer will be left holding the losing card.

WOULD THE CUBAN PEOPLE BENEFIT FROM AMERICAN TOURISM

Let us now look at the policy considerations. The stated goal of U.S. policy is to contain the Castro's communist regime by limiting its access to hard currency and promoting democracy and a rule of law.

How would a change in current travel restrictions in regard to Cuba impact U.S. goals and interests? Would opening Cuba to dollar-spending American tourists subsidize repression and assist Fidel Castro in legitimizing the "tourist apartheid" he has imposed on Cubans?

The Castro government sets aside hotels, beaches, stores, restaurants, even hospitals and clinics for foreigners and prohibits Cubans from staying in those hotels or patronizing those facilities. Do Americans who advocate changes in U.S. travel policy have any moral responsibility to raise the issue of this apartheid? Should the rights of vacationing American tourists supersede the right of people living in Cuba to move freely about their own country? To eat at the same restaurants? Visit the same beaches? Obtain care in the same clinics?

At the beginning of the 21st Century, it no longer suffices to say that what happens 90 miles away is not America's business. The long history of misguided U.S. policies toward Latin America should raise a cautionary flag when dealing with Cuba. The Cuban people are asking today, and will ask tomorrow: Where are their American friends in time of need? How many business leaders and Congressional visitors have asked President Castro to lift his tourist apartheid? Allow the International Committee of the Red Cross to visit Cuba's political prisoners? Grant Cubans the same economic rights and privileges enjoyed by foreigners?

And what about the right of U.S. citizens to use international airspace? Six years ago Castro's warplanes shot down two small civilian aircraft in international airspace over the Florida Straits. Three U.S. citizens died. So did a Cuban citizen who was legally residing in the United States. The Clinton Administration presented indisputable evidence to international organizations that the Castro government deliberately murdered these men. Would it be fair to say that the right to live is just as important as the right to travel? Will America's civil-rights organizations so concerned about international travel join the families of those who died in seeking an indictment of those who pulled the trigger?

The Cuban regime needs the hard currency of foreign tourists to maintain its repression. As I said earlier Castro's communist government is bankrupt. Yet the dic-

tator continues to muster and mobilize foreign apologists to press for access to American-funded trade credits and loan guarantees and to American tourist dollars.

The discussion on lifting the sanctions is somewhat schizophrenic: Some argue that lifting the travel ban will save the "achievements" of the Cuban Revolution. Others say that American tourists will ensure collapse of the Castro dictatorship. Both groups cannot be right, but both can be wrong. Many Central European leaders believe that radio broadcasts and solidarity with dissidents were extremely important in helping them win their struggle for freedom, but that Western loans and tourism propped up communist regimes that would have collapsed much earlier.

Professor Jaime Suchlicki, a noted historian at the University of Miami, has written ["American tourists would boost Castro," The Providence Journal, Jan.10, 2001] that the belief that unilaterally and unconditionally lifting the travel ban "would benefit the Cubans economically and hasten the downfall of communism—is based in several incorrect assumptions." The first is "that Castro and the rest of the Cuban leadership are naive and inexperienced and, therefore, would let tourists from the U.S. subvert the revolution and influence internal developments. The second is that Castro is so interested in close relations with the United States that he is willing to risk what has been uppermost in his mind for 41 years—total control of power and a legacy of opposition to 'Yankee imperialism'—in exchange for economic improvements for his people."

Dr. Suchlicki also writes that lifting the travel ban without securing meaningful changes in Cuba would:

—Guarantee the continuation of the current totalitarian structures.

—Strengthen state enterprises because the money would flow into businesses owned by the Cuban government. (Most businesses are owned in Cuba by the state and, in all foreign investments the Cuban government retains a partnership interest.);

—Lead to greater repression and control since Castro and the rest of the leadership would fear that U.S. influence would subvert the revolution and weaken the Communist Party's hold on the Cuban people.

—Delay instead of accelerate a transition to democracy in the island.

— Send the wrong message to the enemies of the United States: that a foreign leader can seize U.S. properties without compensation; allow the use of his territory for the introduction of nuclear missiles aimed at the United States; espouse terrorism and anti-U.S. causes throughout the world; and eventually, the United States will "forget and forgive," and reward him with tourism, investment, and economic aid.

Some argue that tourism and foreign investors would help bring respect for human rights in Cuba. But in the absence of other factors, the statement is simply not supported by the facts. As reported by the AmCham Cuba Newsletter (February 2002), "A Congressional delegation came under fire in Cuba for focusing only on criticism of U.S. sanctions at the expense of discussion on Cuba's internal human rights. A leading Cuban dissident, Oswaldo Paya of the Christian Liberation Movement, said the only issue the delegation wanted to discuss was the embargo. Paya charged that the visitor should 'Question whether there exists conditions whereby Cubans can freely participate with dignity in commerce, foreign investments, and cultural exchanges.'"

Despite millions of foreign tourists every year Cuba remains a totalitarian state. Canada has acknowledged that its "policy of engagement" has failed to produce any significant change in the human rights situation on the island. Why should American tourists have an impact different from that of the thousands of Canadians who have been visiting Cuba for years?

Castro wants the benefits of capitalism, without Cuban capitalists. Cuban workers are badly treated. Strikes and nongovernmental labor unions are forbidden. Foreign investors cannot hire workers directly. Sheritt, the Canadian nickel company, pays Castro $9,500 per year per worker; the regime pays the workers the equivalent of $20 a month. Castro has allowed some minimal reforms due to the economic crisis. In a perverse way, those who favor lifting the sanctions on Castro's terms will discourage any future economic or political reforms. The real embargo responsible for Cuba's misery is the Marxist, command economy that failed in the Soviet Union and every where else it has been tried.

Castro goes to great lengths to restrict any number of rights of the Cuban people. Cubans are required to obtain "an exit permit" before leaving Cuba. Cuban citizens abroad must obtain a visa from a Cuban consulate before returning home. Cubans emigrating from the island are not allowed to buy plane tickets with pesos; they must have dollars. They are allowed to take with them only "personal property," some clothes, etc. The government confiscates everything else: cars, furniture, electric appliances, kitchen utensils, etc.

Before Cubans are allowed to leave the island they must pay several hundred dollars to the government in "processing fees." Because most Cubans do not earn dollars, they depend on someone outside the island to pay the fees and to buy their plane tickets. A Cuban family would have to save all of its earnings for 10 years or more to accumulate the amount required to buy three plane tickets and pay government exit fees.

There are many Cubans who have visas issued by the United States or other governments and who have money from family or friends abroad but are arbitrarily denied exit visas by the Castro government. Here are a few of their stories:

Lazara Brito and her children Yanelis, Yamila, and Isaac were granted U.S. visas in 1996, but remain virtual hostages in Havana. Castro will not allow them to join her husband and their father Jose Cohen in the United States. Cohen, once a Cuban intelligence officer, was granted political asylum in the United States in 1994. Despite his appeals to Americans and international organizations who meet with Castro, his family remains in Cuba. They are not charged with any crime. Lazara Brito has written: "neither I nor my three children can have legal representation. My husband, who is abroad, and I here call out for help from all who believe in human rights everywhere."

Blanca A. Reyes Castañó son, Miguel Angel Sánchez Reyes, has lived in Miami since 1993. She has seen him only three times in eight years. Twice he came to Cuba, and once she visited him in the United States. Mrs. Reyes wrote: "On 16 November 2000, after waiting for 63 days and having attained a U.S. visa to travel to see him, Cuba's Inmigration Department refused to grant me the required exit permit. They said they were following Cuba's laws. I asked, what laws do not allow a mother to visit her son? I have yet to receive an answer." Why would the Castro government deny her an exit visa? She is the wife of Raul Rivero, a dissident poet who is also not allowed to travel. Reporters Sans Frontieres, Amnesty International and other organizations have denounced the persecution, harassment and imprisonment of Cuban independent journalists and their families. "One would have thought," she says "that the solution is for my son to visit us in Cuba, but I fear for his safety. My brother-in-law who resides in Canada obtained a Cuban visa, but when he arrived he was placed under virtual house arrest. He wasn't allowed to see his 82-year-old mother or his brother Raul. Is it unreasonable to think that something like that would happen to my son if he returns to Cuba?"

Iris Gonzalez-Rodiles Ruiz has not seen her son Greco in more than two years. She has yet to meet her first grandson, Rafael Diego, now a year old. Her daughter in law, Daniela, is a Swiss citizen. Cuban authorities denied her the required "exit permit" to visit her family in Bern to help take care of her grandson, who suffers from allergies and asthma and requires special care.

"The authorities refused to tell me the reason I am not allowed to travel abroad," she says. "They claim they do not have to tell me why." She is an independent journalist.

Ohalys Victores Iribarren is also an independent journalist. The authorities will not allow him to travel abroad because he writes for "media not under the control of the Cuban government." He says he does not wish to leave Cuba, "but due to political reasons I am being forced to leave." He has a U.S. visa. His family already lives in the United States.

For more than 10 years Oswaldo de Cespedes Feliu has challenged the Cuban government working four of those years as an independent journalist. Fidel Castro has referred to him on Cuban TV, mentioning his name. As a result Oswaldo says he and his family are "very fearful." On March 15, 2001, at the International Airport Jose Marti in Havana the Cuban authorities blocked his departure for the United States. On April 25 his children and wife were allowed to leave, but the Castro regime continues to deny him the right to emigrate. He has been interrogated by State Security, and "The authorities have turned a deaf ear to my petition to allow me rejoin my family in the United States."

In conclusion, let us not pretend that Americans have an absolute right to vacation in Cuba.

U.S. policy toward travel to Cuba is correct when it takes into account Castro's denial of civil liberties in Cuba, his 42 years of allying Cuba with the world's rogue regimes and sponsoring anti-American violence, and continuing efforts to manipulate American institutions and public opinion. Again, in 1984 the Supreme Court ruled that restrictions on travel to Cuba "are justified by weighty concerns of foreign policy." That is true today as well. Defense of civil liberties in this country neither requires nor warrants spending American dollars to subsidize repression in Cuba.

Senator DORGAN. The American Civil Liberties Union has provided testimony submitted by Timothy Edgar that we will make a part of the record.

[The statement follows:]

PREPARED STATEMENT OF TIMOTHY H. EDGAR, AMERICAN CIVIL LIBERTIES UNION

Mr. Chairman, Senator Campbell and members of the subcommittee: On behalf of the American Civil Liberties Union (ACLU) we commend you for holding this important oversight hearing of the Treasury Department's Office of Foreign Assets Control (OFAC), which is charged with enforcing the government's restrictions on travel to Cuba.

The ACLU is a non-partisan, non-profit organization with approximately 300,000 members, dedicating to preserving our freedoms as set forth in the Constitution and the Bill of Rights. We believe that the restrictions on travel to Cuba infringe on the constitutional right of Americans to travel freely across borders, and are not justified by any valid interest that could overcome that right.

Last July, the ACLU supported an amendment to H.R. 2590, the fiscal year 2002 Treasury/Postal Appropriations Bill, that would have ended funding for enforcement of the restrictions on travel to Cuba. That amendment, offered by Representatives Jeff Flake (R-AZ), Jim McGovern (D-MA), Jerry Moran (R-KS) and Howard Berman (D-CA) was approved by a strong vote of 240–186. Unfortunately, the amendment was not included in the final legislation.

As former Supreme Court Justice William Douglas observed, "[f]reedom of movement is the very essence of our free society, setting us apart. . . it often makes all other rights meaningful." The Supreme Court has repeatedly recognized that the right to travel is protected under the Fifth Amendment as a liberty interest that cannot be denied without due process of law. Moreover, freedom of movement allows access to information and encourages the free exchange of ideas and opinions, and thus implicates the First Amendment rights of Americans. Like the freedom of speech, association, and assembly, the right to travel promotes our democratic values of individual autonomy, truth-seeking, and self-government. For example, every person should be free to learn firsthand about the government of Cuba—and of the policies and activities of the U.S. government in Cuba—in order to participate meaningfully in the public debate on crucial foreign policy issues related to Cuba. When the Supreme Court considered restrictions on travel to Cuba in *Regan* v. *Wald*, 468 U.S. 222 (1984), it held by a narrow margin that the travel restrictions were permissible only in light of the overriding Cold War national security concerns asserted by the government, concerns that the end of the Cold War have rendered obsolete.

Under current Treasury Department regulations, Americans are generally restricted from spending money in the course of their travel to Cuba—a subterfuge effectively restricting travel itself to Cuba. Foreign policy should not be implemented by methods that violate a constitutional freedom. As a general rule, the government should not restrict travel to a particular country unless it is in the midst of an actual military conflict.

ACLU has received disturbing reports of increased harassment by the Treasury Department of American citizens and residents who have traveled to Cuba pursuant to current law. We urge the Subcommittee to determine whether stepped up enforcement of this misguided policy is an appropriate use of government resources at this time in our history. Ultimately, we believe Congress should put a stop to this unwarranted government intrusion into the freedom of American citizens and residents by adopting legislation to end the travel ban once and for all.

When Americans travel abroad, they spread our values of freedom and justice and help advance the free inquiry of ideas and free flow of information beyond our borders. The collapse of Communism in the former Soviet bloc—nations to which Americans' travel was not restricted by the U.S. government—instruct that one way to bring about democratic change is through personal interaction and sharing of our democratic ideals. This principle has been the basis for the limited "people to people" contacts among Cubans and Americans allowed under current law. Ensuring the constitutional right of U.S. citizens and lawful permanent residents to travel will promote democracy and human rights in Cuba, not the government of Fidel Castro.

There is no justification for restricting travel to Cuba simply because of its deplorable human rights record or lack of diplomatic relations with the United States. Americans currently are permitted to travel to such countries as Sudan and Iran, with which the U.S. has no diplomatic relations, which have poor human rights

records and where Americans might face danger. The choice to engage in travel should rest with the individual, not with the government.

Ending the Cuba travel restrictions would promote individual liberty and begin to reverse an unproductive U.S. policy towards Cuba by ending funding for limiting travel-related expenditures by United States citizens and lawful resident aliens of the U.S. when they travel to Cuba. We urge that you do so this year.

CONCLUSION OF HEARING

Senator DORGAN. I thank you, Senator DeConcini, and you, Ambassador Hayes, for being here to testify. You know that this issue will have substantial attention by the Congress this year. We wanted to talk specifically about OFAC, the Treasury Department enhanced enforcement, but more broadly, as well, about the policy issues that underline all of these.

We thank all of you, especially those who have traveled some distance to be here today. It will contribute to the debate in this Congress to have had this hearing.

This hearing is now recessed.

[Whereupon, at 12:25 p.m., Monday, February 11, the hearing was concluded, and the subcommittee was recessed, to reconvene subject to the call of the Chair.]

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