

**HEARING BEFORE THE
HOUSE JUDICIARY COMMITTEE
SUBCOMMITTEE ON IMMIGRATION POLICY AND ENFORCEMENT**

“**H.R. 2831**, To amend Public Law 89-732 to modify the requirement for a Cuban national to qualify for and maintain status as a permanent resident.”

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TESTIMONY OF MAURICIO CLAVER-CARONE

Executive Director

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Thank you, Mr. Chairman.

My name is Mauricio Claver-Carone and I am the Executive Director of Cuba Democracy Advocates, a non-profit, non-partisan organization dedicated to the promotion of human rights, democracy and the rule of law in Cuba.

It is truly a privilege to be here with all of you today to testify in support of H.R. 2831, a bill to modify the requirements in the Cuban Refugee Adjustment Act ("CRAA") under which a Cuban national can qualify for and maintain status as a permanent resident.

The Cuban Refugee Adjustment Act of 1966 gives Cuban nationals -- once they reach the United States and stay for a year -- a right to become legal, permanent residents. Cubans are the only nationality to which the U.S. Congress has awarded this special privilege.

The legislative history of the CRAA holds that immigrants from Cuba are refugees under international law, hence its original name.

Under the United Nations Convention Relating to the Status of Refugees of 1951, a refugee is a person who *"owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion, is outside the country of his nationality, and is unable to or, owing to such fear, is unwilling to avail himself of the protection of that country."*

Undoubtedly, Cubans remain persecuted for their political opinions by the Castro dictatorship, which remains as brutal as ever. Thus, it is not yet time to repeal the CRAA.

According to the U.S. Department of State's most recent human rights report, the Castro regime's violations include:

"[...] abridgement of the right of citizens to change their government; government threats, intimidation, mobs, harassment, and detentions to prevent citizens from assembling peacefully; and a significant increase in the number of short-term detentions, which in December rose to the highest monthly number in 30 years.

[...] beatings, harsh prison conditions, and selective prosecution and denial of fair trial. Authorities interfered with privacy and engaged in pervasive monitoring of private communications. The government also placed severe limitations on freedom of speech and press, restricted freedom of movement, and limited freedom of religion. The government refused to recognize independent human rights groups or permit them to function legally. In addition, the government continued to place severe restrictions on worker rights, including the right to form independent unions."

Moreover, it recognizes that:

"Most human rights abuses were official acts committed at the direction of the government, and consequently the perpetrators enjoyed impunity for their actions."

In 2011, Cuban independent journalists (*CIHPress*) documented over 3,835 political arrests by the Castro regime -- more than a 150% increase from 2010.

And these are only political arrests that are known and fully documented. Countless others are presumed, for Cubans can be preemptively picked up at any time, upon the whim of the authorities, and charged under Article 72 of the Cuban Criminal Code, referred to as a “dangerous state,” which provides:

"Dangerous state is considered to be the special proclivity one finds in a person to commit crimes, demonstrated by the conduct observed in manifest contradiction with the norms of socialist morality."

As a result, Cubans should undoubtedly continue to be paroled into the United States (“U.S.”) as refugees fleeing persecution from the sole remaining dictatorship of the Western Hemisphere.

However, some things have changed since the CRAA was originally enacted.

In 1994, as rising political pressure and economic woes threatened the regime’s post-Soviet existence, Fidel and Raul Castro resorted to their old tactic of creating a migration crisis (i.e. Mariel boatlift of 1980), but with a new twist. Thus, they began allowing Cubans to take to the sea in makeshift rafts.

From this crisis, the Castro regime extracted a migration accord ("1994 Accord") from the Clinton Administration, which allocated a minimum of 20,000 yearly visas to residents of Cuba - - regardless of their political status vis-à-vis the dictatorship.

Since the 20,000 minimum visas per year could not be met through the Immigration and Nationality Act (“INA”) preference system, the Clinton Administration decided to use the CRAA as its legal authority to allow this new category of Cubans to come to the U.S. and become legal, permanent residents. It even created a “visa lottery” program to randomly select -- once again, regardless of political rationale -- who receives a visa -- in clear violation of the CRAA’s original intent.

Pursuant to the 1994 Accord, nearly half a million Cubans have entered the U.S. and become legal, permanent residents under the CRAA. Although no longer a pre-requisite, most have nonetheless had a political rationale for fleeing the island -- others have not.

Yet, both are equally afforded the benefits of the CRAA. Not only regarding their migratory status, but also the generous means-tested public assistance programs afforded to refugees and to which they qualify thanks to the CRAA. These include Supplemental Security Income (SSI) and Temporary Assistance for Needy Families (TANF). Such public assistance is meant to help Cuban refugees settle in the U.S. However, many non-refugee Cubans currently use these benefits, which can average more than \$1,000 per month, to immediately travel back to the island, where the average income is \$20 per month, and comfortably reside there for months at a time on the taxpayer’s dime.

The time has come to legally ensure that only Cubans who come to the U.S. as refugees are

afforded the special privileges provided under the CRAA -- and thus, restore the law's original intent.

This does not mean that Cubans who are not refugees should be denied entry into the U.S. It simply means that they should be subject to the same set of immigration rules as Mexicans, Canadians, Filipinos or any other nationalities patiently waiting to do so.

Thus, H.R. 2831 would bring non-refugee parity.

Otherwise, this current backdoor loophole risks altogether ending the needed special protections the CRAA originally intended for those persecuted by the Castro regime -- further endangering lives, while granting a calculated victory to the island's cruel dictatorship.

The Castro regime has manipulated the 1994 Accord to create a system of travel back-and-forth to the island for tens of thousands of non-refugee Cubans, who nonetheless adjusted their status under CRAA. Meanwhile, it continues to deny the right of return to those who have fled for political reasons -- keeping their names on an infamous "black list." This travel network carries minimum political risk for the regime, as it fully controls access to the island, while delivering huge financial benefits for its totalitarian economy -- thanks to the constant stream of desperately needed hard currency it creates. It has also facilitated the Castro regime's ability to establish and repatriate funds from lucrative criminal enterprises, including billionaire Medicare fraud schemes.

These incongruences are further exacerbated by the fact that the U.S. government outsources the first-tier screening of Cubans chosen to be paroled into the U.S. under the CRAA to the Castro regime. That's right; the U.S. Interests Section in Havana hires Castro regime personnel to interview Cubans seeking visas. Thus, adding insult to injury, current U.S. policy allows the persecutors to choose who will be afforded the privilege of the CRAA.

The result is a process whereby thousands of Cuban non-refugees are being admitted to the U.S. under CRAA, while many who are genuinely persecuted for their political views are being denied entry. Such is the case of a former senior level Cuban military official, Maximo Omar Ruiz Matoses, who spent 17 years as a political prisoner of the Castro regime for dissenting within its ranks, yet was recently denied asylum by the U.S. This flips the entire purpose of the CRAA on its head.

The fairest and easiest way to legally classify those Cubans who have a legitimate political rationale for seeking refuge in the U.S. versus those who do not is by identifying those who quickly turn-around and travel back to the island.

Identifying those who travel back in order to determine a political rationale for CRAA purposes is not a new rubric. It is how U.S. law distinguishes legitimate versus fraudulent refugee claims for every other nationality in the world.

Under Section 208.8(b) of Title 8 of the Code of Federal Regulations, an asylum applicant who leaves the U.S. pursuant to advance parole and returns to the country of claimed persecution is presumed to have abandoned his or her asylum application. Such an individual's underlying asylum status may be terminated even if the individual has already become a lawful permanent

resident.

Therefore, in order to rightfully restore the original intent of the CRAA, Congress should adopt H.R. 2831, which would make it consistent with Section 208.8(b) as applied to Iranians, Syrians, Sudanese and other source-nations of refugees, whose asylum status may be terminated if they choose to return to their country of feared persecution, until they become U.S. citizens.

Thus, H.R. 2831 would bring refugee parity as well.

It is the most reasonable way to ensure the CRAA continues to protect Cuban refugees who are fleeing the Castro regime's persecution, without providing a financial lifeline and an additional control mechanism to their persecutors.

Mr. Chairman, this concludes my testimony. Again, I truly appreciate the invitation and the opportunity to speak before you and the committee. I will be pleased to respond to any questions.