

Testimony of Juan Carlos Gómez
Hearing on HR 2831
May 31, 2012
United States House of Representatives
Committee on the Judiciary
Subcommittee on Immigration Policy and Enforcement

Mr. Chairman,

I am honored to appear before you in the hope that I can be of assistance in regard to House Bill 2831. I appear as someone who was able to become an American because of the Cuban Adjustment Act, as someone who benefited from the Freedom Flights, as someone who has represented Cubans for over twenty years who were applying for lawful permanent residence under the Cuban Adjustment Act, and as someone who has taught the workings of the Act in law school. The Cuban Adjustment Act of 1966 is meant to be a tool to alleviate the suffering of the Cubans who have made it to the United States after fleeing from oppression in Cuba. There have been amendments to the Act over the decades. The Act currently requires one year of physical presence in the United States in order to apply for adjustment of status. It originally required two years of physical presence. There have been calls to revoke the Act. Many people misunderstand that the Act is not the reason why our Government does not physically deport removable Cubans to Cuba. There simply is no treaty between Cuba and the United States to facilitate physical removal. There have been a few exceptions to the inability to physically remove these Cubans.

The Act is an embarrassment to Castro Government because it is a reminder to the world that their failed system has for decades forced Cubans to flee Cuba. Some say that the Cuban Adjustment Act is a magnet that attracts Cubans to the United States. They are wrong. It is freedom and opportunity that are the magnets that attract Cubans to the United States. It is particularly embarrassing to the Castros and their henchmen, that it was not just persons who fled immediately after the 1959 change in government, but hundreds of thousands over the last two decades. As long as the caudillos and their thugs are in power in Cuba, the Act must continue to exist.

The main refugee system is inadequate to address the problem of Cuban refugees seeking freedom in the United States. In the Cuban situation, the parole authority has been used since the 1960's because the global refugee quota system would have failed to alleviate the suffering of those who sought freedom in the United States. As the decades of tyrannical government elapsed, there have been different waves of migration. There was the Peter Pan Program in the early Sixties, a boatlift out of Camarioca Harbor in 1965. I have mentioned the Freedom Flights from 1965 to 1971. There have been decades of heroic rafters and others who fled in very creative ways. There have been defectors. There was the Mariel Boatlift and the 1994 Guantanamo exodus. Since then there have been visa or parole lottery winners. There are, of course, many who have come under the main system of immigration. There are also persons who have been granted refugee status. The vast majority of Cubans though were parolees and benefitted from the Cuban Adjustment Act. Those of us who work in the field have seen thousands of good people become permanent residents. Many of us became United States Citizens.

Many who benefitted from the Act decades ago, including my parents, are now dead. We must distinguish the poor factory workers who are struggling to support themselves and their families here and their relatives in Cuba from the picaro, or rogue. We must distinguish victims from the oppressors and the opportunist. The Bill, in its current form, has no exception for a person who would return to the Island to deal with the illness or death of a parent, spouse, or child.

I have three small children. I cannot imagine the pain of being separated from them for the years that it takes under our immigration system for lawful permanent residents to reunite with their children. When one is a refugee or an asylee, there is a mechanism in place to reunite with spouses and children (unmarried son or daughter who is under twenty years of age). Unlike these individuals, persons who adjusted under the CAA need to file a relative petition under the INA. There is a mechanism in place for paroling some relatives. We are still talking about years.

We must be aware that we have mechanisms in the Immigration Laws of the United States to filter out persons who should not be allowed to be admitted as

lawful permanent residents. In the Cuban situation Section 212 of the Immigration and Nationality Act already bans voluntary members of the Communist Party for a period of 5 years since the date that they stopped being members. There are sections that deal with bars to persons who provided material assistance to terrorist organizations, and persons who are members and/or representatives of terrorist groups. Oddly, section 212(a) does not explicitly bar all persecutors from admissibility.

There are weaknesses in our immigration laws as related to the Cuban situation. The best example that I can think of is where the children and sons and daughters as defined in the INA of officers of the Cuban military and of the elite in the Cuban machinery, including ministers, vice-ministers, heads of bureaucracies, politburos from the local level on up, have immigrated to the United States. They benefitted from the lifestyle of the elite with the Castros without actually having to be members of the Communist Party. Once these individuals are United States citizens, they can petition for their parents. You should think of this as an insurance policy for the elite once there is a change in the government of Cuba.

Another example is that persons who were voluntarily part of the machine of government in Cuba may still benefit from the Cuban Adjustment Act. It is ironic while a country, and many individuals, have had to wait for fifty plus years for freedom, former members of the Communist Party need only wait five years to then apply for benefits under the Cuban Adjustment Act. If I may be so bold as to suggest, that everyone from the officer class and management level on up in Cuba, should be denied access to the Cuban Adjustment Act. In this group, you must include presidents of local mass organizations, like the committees for the defense of the [so-called] revolution. If they fear persecution in Cuba, they can apply for refugee status at our Interest Section or asylum here in the United States.

If you work for the Ministry of Interior in Cuba, the main tool of repression and you were not a member of the Communist Party, you can become a lawful permanent resident of the United States. I would also suggest that these individuals be denied access to parolee status, which is one of the triggers to being able to apply under the Cuban Adjustment Act.

Those who are fleeing Cuba are fleeing a failed system of government. Some are refugees in the sense of the Refugee Act of 1980. Most are fleeing oppressive conditions, a kind of poverty not in the economic sense, but the soulless poverty found in a Stalinist totalitarian world. This is a world where there is no hope for one's children, a world of fear of one's neighbors, friends, and of the machine of government. In conversations with my clients over the last two decades, I have repeatedly heard how they were afraid to think freely because of the horrendous reality that they must face each day. I was told that it was not a good idea to live in a fantasy of freedom when living in a reality of fear and oppression. I was told that you had to always be careful with what you said and what others said around you.

I appreciate that the intention of House Bill 2831 is an effort to strengthen the Cuban Adjustment Act. I am concerned because it needs to take some exceptions into consideration. I urge the Committee to be cautious in legislating. I urge the Committee to think of ways to protect the law from persecutors and others who were part of the machine of oppression in Cuba without hurting its victims. While I understand the intention of the Bill, Congress must always be cautious in creating laws that restrict life and freedom. It is dangerous to legislate too broadly and hurt the innocent with those who have and who would continue to abuse our Country's laws and generosity. Understanding the difficulties of dealing with immigration laws and with the Cuban situation, I suggest that the Bill be considered with my concerns in mind. I will be happy to address any questions and to assist in strengthening the Cuban Adjustment Act to continue to protect those victims who come to our shores from Cuba.

Respectfully,

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