

September 26, 1996

TO: Senator Dole
FROM: Mira Baratta
SUBJECT: Update on "Libertad" Bill

Per your request, I am providing an update on the "Libertad" bill.

Background

In July, Clinton waived the provision in the "Libertad" bill (Title III) dealing with the right of U.S. citizens to sue "traffickers in stolen property." This was a six month waiver. The civil wrong of trafficking -- dealing in stolen property -- goes into effect on November 1, but the right to sue has been suspended until February 1, 1997 (as a result of Clinton's waiver). Clinton has the authority to waive this provision again -- for another six months -- if he chooses. President Clinton has also not effectively enforced the visa denial provisions (to traffickers) in Title IV. He only issued letters to two companies -- 15 individuals -- denying them entry into the United States. According to our Hill sources that the administration is putting implementation of this bill on hold. Attached is a bill summary.

Talking Points

- Through his waiver and through his feeble approach on visa denials, President Clinton has taken the 'teeth' out of the Helms/ Burton 'Libertad' bill.
- The administration's commitment to implementing the 'Libertad' bill is in serious question.
- It seems that President Clinton is more concerned about pleasing other countries -- who oppose this legislation -- than promoting freedom in Cuba and protecting the rights of American citizens.
- In my view, these are the wrong priorities. We need to put the rights of American citizens and the American interest of ending Castro's regime, first.
- We cannot forget that Fidel Castro has brutally oppressed the Cuban people for over three decades. Moreover, it was only a few months ago, that American citizens were shot down and killed by Castro's air forces.

SUMMARY OF THE CUBAN LIBERTY AND DEMOCRATIC SOLIDARITY (LIBERTAD) ACT

TITLE I: STRENGTHENS INTERNATIONAL SANCTIONS AGAINST THE CASTRO GOVERNMENT

- * URGES THE PRESIDENT TO SEEK, IN THE U.N. SECURITY COUNCIL, AN INTERNATIONAL EMBARGO AGAINST THE CASTRO DICTATORSHIP.
- * AUTHORIZES THE PRESIDENT TO FURNISH ASSISTANCE TO SUPPORT THE DEMOCRATIC OPPOSITION AND HUMAN RIGHTS GROUPS IN CUBA
- * INSTRUCTS U.S. EXECUTIVE DIRECTORS TO INTERNATIONAL FINANCIAL INSTITUTIONS TO OPPOSE CUBAN MEMBERSHIP UNTIL THE PRESIDENT DETERMINES THAT A DEMOCRATICALLY-ELECTED GOVERNMENT IS IN POWER.
- * CODIFIES THE EXISTING EMBARGO ON CUBA IN STATUTE SO THE EMBARGO MAY NOT BE LIFTED UNTIL A TRANSITION GOVERNMENT IS IN PLACE

TITLE II: SUPPORT FOR A FREE AND INDEPENDENT CUBA

- * INSTRUCTS THE PRESIDENT TO DEVELOP A PLAN FOR PROVIDING SUPPORT TO THE CUBAN PEOPLE DURING THE TRANSITION TO A DEMOCRATICALLY ELECTED GOVERNMENT
- * AUTHORIZES THE PRESIDENT TO TERMINATE THE EMBARGO ONCE A DEMOCRATIC GOVERNMENT IS IN POWER IN CUBA

TITLE III: PROTECTION AGAINST CONFISCATORY TAKINGS OF AMERICAN PROPERTY BY THE CASTRO REGIME

- * PROTECTS THE INTERESTS OF AMERICAN CITIZENS WHOSE PROPERTY WAS CONFISCATED BY ALLOWING ACTION IN U.S. COURTS. THE PRESIDENT HAS THE AUTHORITY TO DELAY THE EFFECTIVE DATE ON A SIX MONTH BASIS IF HE DETERMINES SUCH A DELAY WOULD BE "NECESSARY TO THE NATIONAL INTEREST AND WILL EXPEDITE A TRANSITION TO DEMOCRACY IN CUBA."
- * THIS CONCRETE ACTION WILL DETER FOREIGN INVESTMENT IN CUBA

TITLE IV: EXCLUSION OF ALIENS WHO HAVE CONFISCATED PROPERTY

- * EXCLUDES FROM THE U.S. ALIENS WHO CONFISCATED PROPERTY OF U.S. NATIONALS OR WHO TRAFFIC IN SUCH PROPERTY

**SUMMARY OF
THE CUBAN LIBERTY AND DEMOCRATIC SOLIDARITY (LIBERTAD) ACT**

Strengthens International Sanctions Against the Castro Government

- Urges the President to seek, in the U.N. Security Council, an international embargo against the Castro dictatorship.
- Codifies the existing embargo on Cuba in statute so the embargo may not be lifted until a transition government is in place.
- Authorizes the President to furnish assistance to support democracy-building efforts, assist victims of political repression, and facilitate visits of international human rights monitors.
- Prohibits loans, credits, or other financing to be extended knowingly by a U.S. national or agency to any person to finance transactions involving U.S. property confiscated by the Cuban government; the President may suspend this provision during a transition government and end it for a democratic government.
- Instructs U.S. executive directors to international financial institutions to oppose Cuban membership until the President determines that a democratically elected government is in power. If, prior to that time, such institution approves a loan to Cuba, the U.S. shall withhold payment to that institution in an amount equal to the amount of the loan, unless the loan is to a transition government and it contributes to a stable foundation for a democratically elected government to take power.
- Conditions U.S. aid to former Soviet states (FSU) on the conduct of their economic relationship with Cuba on market terms; expresses strong congressional disapproval of Russian credits to Cuba in exchange for the use of intelligence facilities targeted at the United States; and requires the President to withhold aid to any FSU state by an amount equal to the sum of assistance and credits for intelligence facilities in Cuba, unless the President certifies that this aid is important to U.S. national security and that the Russians are not sharing intelligence with the Cubans. (U.S. aid for humanitarian programs and democratic political reform, amongst other programs are exempted).
- Instructs the Director of USIA to implement the conversion of Television Marti to Ultra-High Frequency (UHF) broadcasting, as previously funded by Congress.

- Expresses the sense of Congress that the President should, before reinstituting family remittances and family travel to Cuba, insist that the Cuban government permit the unfettered operation of small businesses, end the sanction for refugee departure from the island, release political prisoners, and recognize the right of association.
- Requires reports to Congress on commerce with, assistance to, and military relationships with Cuba by other foreign countries.
- Notes existing prohibitions on the entry of sugar products that are of Cuban origin or are derived from Cuban products, and that U.S. national security interests require enhanced assurances that Cuban sugar products do not enter the United States.
- Authorizes the President to implement a fully-reciprocal exchange of news bureaus between the United States and Cuba, provided that such an exchange meets certain conditions, including that Cuba allow free, unrestricted and uninhibited movement on the island to American news organizations.
- Clarifies that nothing in this Act prohibits any lawfully authorized U.S. Government investigative, protective, or intelligence activity.

Support for a Free and Independent Cuba

- Instructs the President to develop a plan for providing support to the Cuban people during a transition and democratically-elected government.
- Authorizes assistance during the period of a transition government for food, medicine, medical supplies, and equipment, and assistance to meet emergency and basic humanitarian needs of the Cuban people.
- Authorizes the President to provide assistance to a democratically elected government to promote free market development and private enterprise, including (1) EXIM Bank financing and guarantees, (2) OPIC financial support, (3) Peace Corps programs, and (4) assistance provided by the Trade and Development Agency, and to encourage investment in Cuba.
- Authorizes the President to suspend both the economic embargo and the right of action provided under this Act against the transition government in order to contribute to a foundation for a democratically elected government to take power.

- Authorizes the President to terminate the embargo upon a determination that a democratically elected government is in power.
- Requires a report and consultations on trade and investment, once a democratically elected government is in power, on U.S. trade objectives with Cuba, including the extension of most-favored-nation status, Cuba's designation as a beneficiary developing country under the Trade Act of 1974 or as a CBI beneficiary, and other free trade arrangements, including Cuba's accession to NAFTA.

Protection Against Confiscatory Takings of American Property By the Castro Regime

- Seeks to protect the interests of U.S. nationals whose property was wrongfully confiscated by making persons or entities that knowingly and intentionally traffic in confiscated U.S. properties in Cuba liable for damages in U.S. District Court. The intent is to deter third-country nationals from seeking to profit from wrongfully confiscated properties and to deny Castro a source of hard currency.
- Establishes a private civil right of action for any U.S. national having ownership of a claim to commercial property confiscated by Cuba against a person or entity who is knowingly benefitting from the use of such confiscated property without the authorization of the American claimant. Residential claims are restricted to those properties the claim to which is held by a certified claimant or where the home is occupied by a senior official of the government or the communist party. (NOTE: This is a grant of subject matter jurisdiction to U.S. courts and does not require a particular outcome. It does not require a property claimant to use this remedy; it is an option available to U.S. nationals who can satisfy the court's jurisdictional requirements that they have a valid trafficking claim.)
 - Provides a six-month period between this provision's enactment and the ability of a claimant to use this remedy.
 - Claimant may seek damages in the amount certified by the Foreign Claims Settlement Commission (if a certified claimant), or the fair market value at time of confiscation or at the time the claim is filed (whichever is greater).
 - Requires the court (1) to recognize a strong presumption in favor of the amount of the amount as certified by the Foreign Claims Settlement Commission, and (2) to accept the certification as conclusive proof of ownership. For all others, both the amount and proof of ownership must be proven to the court's satisfaction.

- Requires an affirmative duty to notify a potential defendant about the claim to the confiscated property and provides treble damages only after an additional notice has been given.
- Requires that the claim meet a minimum amount in controversy of \$50,000, exclusive of costs.
- Requires service of process in accordance with existing law and rules, including that any actions brought against a state entity be in accordance with the Foreign Sovereign Immunities Act (except that no default judgments are allowed against a Cuban government both recognized by and with which the U.S. has diplomatic relations, unless that government has been given the opportunity to resolve or respond to the dispute and the plaintiff has established his ownership to the court's satisfaction).
- Provides that certified claimants who use this right of action are not denied U.S. Government espousal if they do not receive full compensation; but reduces any responsibility to espouse by the amount of any recovery and discharges the U.S. from responsibility with respect to the certified claim if the claimant receives equal or greater compensation through this right of action.
- Suspends upon the determination that a transition government is in power and terminates the right of action upon a presidential determination that a democratically elected government is in power in Cuba, except for actions commenced before the determination. (President retains authority to nullify claims under the authority of the International Emergency Economic Powers Act, recognized by the Supreme Court in Dames & Moore v. Reagan (1981).)
- Does not require or authorize the U.S. Government to espouse the claims of naturalized persons in any settlement with the Cuba government.
- Protects the settlement amount of all claims certified by the Foreign Claims Settlement Commission by denying a claim to, participation in, or interest in any settlement proceeds by (1) any U.S. national who was eligible to file under the International Claims Settlement Act of 1949 but did not do so, (2) any U.S. national who was not eligible to file under the International Claims Settlement Act, or (3) any Cuban national, including any Cuban government, its agencies and instrumentalities.
- Allows the President to delay implementation of this provision, for periods of no more than six months, only if he determines such a delay would be "necessary to the national interest and will expedite a transition to democracy in Cuba", and will have the authority to temporarily suspend the right to sue prospectively, for periods of no more than six months. Any suspension must be submitted to Congress 15 days before taking effect.

Exclusion of Aliens Who Have Confiscated Property

- Denies visas to individuals who traffic in confiscated property belonging to Americans after the date of enactment.
 - It will only be waiveable for individuals, on a case by case basis, for travel to the United States for humanitarian medical reasons, or to defense themselves in legal actions pursuant to Title III.
 - Trafficking is defined to include any changes, improvements and/or expansions of an existing investment after the date of enactment, thereby chilling foreign investment in Castro's Cuba.

(March 1, 1996)