

August 29, 2016

Dear President Obama,

Your administration has changed the course of U.S.-Cuba relations. This new chapter of U.S. engagement has had a positive impact, not just on the island, but in the United States and throughout the hemisphere.

The steps that have been taken since the rapprochement in December 2014 were inconceivable just five years ago. These gains must be celebrated—they have opened doors to the possibility of a different future for the people of Cuba and the United States.

But this progress must be consolidated, so that no matter who holds office in January, momentum continues toward a more constructive relationship for both countries.

The following document is a detailed set of recommendations for steps that you and your staff could take to further advance U.S.-Cuba relations and consolidate the U.S.-Cuba relationship before a new leader comes to the White House. It is a product of our collective thinking and we hope that you consider pursuing the suggestions we have put forth.

Sincerely,

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## **How the Obama Administration can advance U.S.-Cuba Relations further**

In December of 2014, President Obama announced a major new initiative to normalize relations with Cuba, including opening diplomatic relations and taking steps to dismantle pieces of the embargo. The President accompanied this with a call to the Congress to end the embargo.

Over the last nineteen months much has been done to change the relationship with Cuba. In July of 2015, the two governments opened embassies. In September 2015, they announced the creation of a bi-lateral commission to supervise and coordinate a number of working groups—on property claims, human rights, law enforcement, drug trafficking, health and environmental cooperation, and other issues. The Obama administration and the Cuban government have announced agreements on re-establishing postal service, regularly-scheduled commercial air flights, environmental and scientific cooperation, and law enforcement.

While major differences remain – especially on the issues of the embargo, human rights, property claims and damages, the treatment of fugitives, and the Guantanamo naval base—there has been substantial progress in the negotiations, and major steps forward in the relationship. Most dramatically, President Obama traveled to Cuba in March of this year. He held a joint press conference with President Castro and made a nationally televised public address. Speaking to the Cuban people, he reiterated that the Cold War had ended and the United States had no hostile intentions, though it hoped to see progress on human rights, and a political opening on the island. Since the rapprochement, the Obama administration has also announced four rounds of regulatory reforms to ease trade and travel restrictions.

All these steps are intended to facilitate direct U.S. engagement with Cuba – government-to-government, business-to-business, people-to-people, and non-governmental to academic, religious and civil society. Obama administration officials as well as supporters of the new policy in the private sector, the NGO community and others want to make these advances irreversible.

Despite progress, there are hurdles. The concrete advances on business and commercial relations have been relatively modest, and although there has been growing interest in the Congress to change U.S. policy towards Cuba, the trade embargo remains.

While lawmakers have not yet come to agreement on lifting the embargo, Congress should do much more to protect American interests in Cuba. It should give U.S. farmers better access to the Cuban market, by permitting private financing for U.S. agricultural sales; it should ensure that the U.S. Embassy in Havana is fully staffed to protect American citizens and provide visas to qualified Cuban applicants; it should take steps to better manage irregular migration from

Cuba; and it should take steps to level the playing field for U.S. businesses interested in the Cuban market, relative to foreign competitors.

While the President does not control whether Congress acts, there are steps that he and his staff could take to advance and consolidate further the U.S.-Cuba relationship in the months left before he leaves office. This includes ensuring that all relevant agencies and departments are faithfully implementing the regulations and policies that the administration has announced to date, as they should.

**There are also new steps that should be taken by the Executive Branch.**

The following recommended actions would facilitate legal, financial and commercial transactions and health-related engagement, strengthen security and environmental cooperation, and improve migration policy in ways that would benefit the Cuban people. Moving forward on these recommendations would open new opportunities and expand support for normalization, consolidate some of the changes that have already been made, and strengthen the President's legacy.

## **Summary of Recommendations**

### **Recommendations to Facilitate Greater Financial Engagement and Expand Commercial Transactions**

- **Increase outreach to the U.S. banking system to explain how regulations now encourage greater commercial and financial engagement with Cuba. Assure financial institutions that they will not face penalties if they take advantage of newly authorized opportunities vis-à-vis Cuba, including clearing third-country transactions, processing credit card transactions related to legal travel, and making and receiving payments for legal sales to and from Cuba.**
- **Encourage the international financial institutions to re-engage with Cuba.**
- **Authorize, by general license, or a general policy of approval, participation by U.S. investors in business arrangements in Cuba, including with state-owned firms, cooperatives, or private sector firms, when the goods or services produced benefit the Cuban people.**
- **Authorize by a general policy of approval, the import and sale in the United States of Cuban agricultural products made by the private and cooperative sectors, including transactions that pass through Cuban state export agencies.**
- **Establish a permanent presence for USDA's Foreign Agricultural Service (FAS) and the Animal and Plant Health Inspection Service (APHIS) at the U.S. Embassy in Cuba.**

- In the case of agricultural sales to Cuba authorized by the TSRA, explore how U.S. companies licensed to make sales to Cuba could export the product to Cuba through a third country subsidiary, given the limitations imposed by the Cuban Democracy Act.
- Authorize by a general policy of approval, investments in the renewable energy sector.
- Authorize by a general policy of approval, U.S. participation in offshore oil exploration in Cuban waters. This should include approval for U.S. companies to lease or sell U.S.-owned or built oil exploration equipment to Cuban enterprises, recognizing that U.S.-manufactured equipment meets the highest standards of safety. It should also authorize case-by-case approval of U.S. companies' participation in joint oil explorations, again recognizing the quality of U.S. safety protocols and practices.
- Expand the range of consumer telecommunications software and hardware that U.S. companies are authorized to sell to Cuba by a Commerce Department license exception, in order to expand access to information on the island.

#### **Recommendations to Expand Health-Related Engagement**

- Eliminate barriers which deny U.S. citizens access to clinically proven Cuban-developed drugs. Ensure, through general licensing, that medical and pharmaceutical companies that receive FDA authorization to proceed with clinical trials of Cuban-developed drugs will also receive authorizations to market the product in the United States if it is approved by the FDA after successful clinical trials.
- Conduct outreach to U.S. pharmaceutical manufacturers to make sure they and their legal departments are aware that there is a general policy of approval for export licenses for medical sales, and to address concerns they may have. Arrange a meeting between U.S. manufacturers and Cuban health care sector representatives and importers.
- Authorize U.S. entities (universities, research centers, and private firms) by general license to collaborate in medical and health-related research and development projects in Cuba, including commercial projects.
- Authorize U.S. pharmaceutical and medical equipment companies to include Cuban hospitals and health centers in their clinical trials, potentially speeding up the approval process of new U.S. drugs by expanding the pool of qualified participants required for testing. Cuba's Public Clinical Trials Registry, accredited by the World Health Organization, has experience with testing similar to the U.S. Food and Drug Administration requirements.

- Strengthen bilateral cooperation, jointly addressing health emergencies in the U.S., Cuba and globally, including natural disasters and epidemics such as Ebola, dengue and Zika.

**Recommendations to Strengthen Security Cooperation where there are U.S. Interests at Stake.**

- Deepen and extend counter-terrorism and counter-narcotics cooperation. Based on the recently signed counter-narcotics agreement, improve information sharing processes and exchange of best practices. Invite Cuban counterparts to Coast Guard, DEA, and JIATF-South facilities to understand how the U.S. system works. Request parallel visits to Cuban state institutions.
- Assign a Legal Attaché to the U.S. Embassy in Havana, and pursue a protocol that allows his or her direct contact with counterparts in the Cuban government, for information exchange and requests for assistance in specific cases.
- Build gradually on military-to-military contacts, perhaps with invitations to Cuban military officers to observe or participate in subregional and regional dialogues on issues of mutual interest, including counter-narcotics, terrorism, cyber security, and maritime security.

**Recommendations to Eliminate or Suspend Programs that Fail to Advance People’s Wellbeing Improve Human Rights, or Promote Democratic Opening.**

- Suspend or redirect the “democracy promotion” programs now funded through the National Endowment for Democracy (NED), the State Department’s Bureau of Democracy, Human Rights, and Labor (DRL), and USAID, while conducting a review of existing programs to ensure they are consistent with the President’s policies of normalization of relations with Cuba.

Any program or policy that is carried out under this rubric should be conducted openly, transparently, and with the goal of expanding contacts between the people of the US and Cuba without interfering in Cuba’s internal affairs.

**Recommendations on Measures toward Normalizing Migration.**

- The United States should increase the number of visas it issues for Cubans to obtain legal residence, while the Attorney General should exercise her authority to end preferential treatment for Cuban migrants arriving at U.S. borders, a policy that is currently causing serious irregular migration problems for governments in Colombia, Ecuador, and Central America.

- **End the Cuban Medical Professionals Parole Program, which offers incentives to Cuban doctors working abroad to leave their country and immigrate to the United States.**

## **Recommendations to Improve U.S.-Cuban Relations**

### **Recommendations to Facilitate Greater Financial Engagement and Expand Commercial Transactions**

- 1) Increase outreach to the U.S. banking system to explain how regulations now encourage greater commercial and financial engagement with Cuba. Assure financial institutions that they will not face penalties if they take advantage of newly authorized opportunities vis-à-vis Cuba, including clearing third-country transactions, processing credit card transactions related to legal travel, and making and receiving payments for legal sales to and from Cuba.**

- a) In March, the Office of Foreign Assets Control (OFAC) at the Treasury Department announced that legal financial transactions between a party in a third country and a Cuban entity were legally permitted to be cleared through the U.S. banking system. Despite the announcement, banks and their legal departments have been reluctant to process such transactions.**

U.S. authorities have taken two positive steps to publicize the new regulations and encourage banks to take advantage of them. First, on July 8th, OFAC issued a “Frequently Asked Questions” update that clarified and reiterated that such transactions were legal. Second, officials from OFAC, the Commerce Department, and other U.S. agencies recently participated in a “financial services roundtable” in Cuba, along with officials from major U.S. banks, key financial institutions, and others, and with Cuban banking officials, to generate interest and understanding of the two nations’ banking systems.

*The administration should continue to encourage the banking system to clear legal third-party transactions with Cuba.* The Secretary of the Treasury or other senior officials should complement this with public statements directed at the banking industry, including both U.S. and foreign banks, emphasizing both the legality of pass-through transactions and the opportunities that await the banking sector. General Counsel Offices across the administration should coordinate their policies to ensure consistent messaging and communication of the regulations.

- b) On a similar note, OFAC has authorized the use of U.S. credit cards in Cuba for authorized travel transactions. But only one U.S. bank has made arrangements for the use of its credit card services in Cuba. OFAC has also permitted banks to receive payments for licensed agricultural sales to Cuban state enterprises, and other sales to Cuban private enterprises or to state enterprises for the benefit of the Cuban people. This was authorized by January 2016 regulatory changes to receive payments from Cuba for such sales, but banks have been reluctant to receive such payments.

The administration *should assure the U.S. banking and financial services industry that they will not face penalties if they take advantage of legal opportunities in Cuba.* Demand for credit card and financial services is going to grow substantially in the coming years, and U.S. banks should be encouraged to position themselves to take advantage of this market.

## **2) Encourage international financial institutions to re-engage with Cuba.**

Over the next few years, as more capital flows into Cuba's transitioning economy, the country's financial outlook will drastically change. Its reintegration into financial institutions will smooth this transition, allowing for technical assistance, funding and support in bolstering key economic sectors on the island, such as tourism, agriculture, and infrastructure. While Cuba, which has been critical of many of these institutions in the past, will need to make its own decisions about how it wants to develop these relationships, it would be helpful if the United States recognizes the importance of Cuba's re-engagement with the IFIs and welcomes dialogue between these institutions and the Cuban government.

Although the Helms-Burton legislation appears to require that U.S. executive directors at multi-lateral institutions vote against Cuban membership, this is not necessarily the case. When President Clinton signed Helms-Burton, he issued a statement indicating that he construed the provision to be precatory rather than binding. He asserted that requiring the Executive Branch to oppose Cuban participation would intrude upon the Executive's authority to conduct foreign relations.

Whether the Executive Branch is free to vote for Cuban membership or abstain, rather than voting against Cuban membership, no vote is imminent. The issue now is signaling support for dialogue between the IFIs and Cuba. *The United States should send a public message that assures the Cuban government, the leadership of the multi-lateral institutions, and those looking to invest in key sectors, it supports Cuban engagement with the IFIs, and that it is committed to long-term development and prosperity in the country.* At a minimum, the White House could signal support for an exception to the ban on IFIs to provide technical support to Cuba. Allies in the

Congress might similarly seek to make clear their support for Cuba's re-engagement with the IFIs.

- 3) **Authorize, by general license, or a general policy of approval, participation by U.S. investors in business arrangements in Cuba, including with state-owned firms, cooperatives, or private sector firms, when the goods or services produced benefit the Cuban people.**

OFAC and Commerce have taken important steps to reduce the regulatory burdens on commercial transactions with Cuba. First, with the January 27, 2016 announcement of regulatory changes permitting case-by-case exports to Cuban state-owned firms when goods will benefit the Cuban people. Then came the February approval of a license allowing a U.S. firm to open a tractor production facility in Cuba that would benefit private farmers. This was followed by approvals of licenses that would allow the Starwood hotel chain to manage three Cuban-owned hotels that would cater to U.S. and other visitors. The administration should build on these changes.

*A logical next step would be to announce a policy of case-by-case approval for individuals or businesses to not only sell to, but to invest in, joint ventures or other business arrangements with Cuban state-owned firms when the goods and services produced provide clear benefits to the Cuban people.* This could apply in areas such as education, agricultural production, food processing, public transportation, public health, and infrastructure. A general policy of approval should also apply to any such investments in Cuban-licensed private enterprises and cooperatives. An increase in investments would increase the quality and quantity of goods available to the Cuban people.

Despite challenges on the Cuban side, many U.S. businesses are eager to gain a foothold in the Cuban market because of the long-term potential. But they continue to find the U.S. regulatory framework difficult to navigate. At the same time, because of the commercial possibilities and the investment opportunities, businesses from Europe, China, and Latin America are making inroads in Cuba, and U.S. businesses are missing opportunities.

A number of high visibility business deals between U.S. companies and Cuba in areas that benefit the Cuban people would generate important momentum. This would not only create increased interest and confidence from other companies, but would make it difficult, politically and legally, for a different administration to take steps that would sever business ties.

- 4) **Authorize by a general policy of approval, the import and sale in the United States of Cuban agricultural products made by the private and cooperative sectors, including transactions that pass through Cuban state export agencies.**



Recently the Commerce Department approved the sale of Cuban grown coffee in the United States. *A number of products grown by Cuban private sector farmers or cooperatives that are export-oriented--including tobacco products and organic vegetables and herbs, honey, and some citrus –could be exported to the United States.* The Commerce Department should indicate its willingness to authorize such transactions.

In a similar vein, *the Commerce and Treasury Departments should authorize U.S. travelers to bring home up to \$800 in goods from Cuba, as is allowed when travelers visit other countries,* rather than capping the amount at \$400. This should include up to \$800 in tobacco and alcohol products, as long as travelers certify that such products are for personal consumption and not for re-sale.

**5) Establish a permanent presence for USDA’s Foreign Agricultural Service (FAS) and the Animal and Plant Health Inspection Service (APHIS) at the U.S. Embassy in Cuba.**

Earlier this year USDA and the Cuban Ministry of Agriculture entered into an MOU covering a range of opportunities for collaboration. To fully realize the potential for collaboration and trade, it is necessary to have a permanent presence of FAS and APHIS. This would afford an in-country presence to develop necessary relationships, gain firsthand knowledge of Cuba’s agricultural challenges and opportunities, implement the MOU, and manage the increasing U.S. agricultural stakeholder interest generated by the use of USDA’s checkoff programs. It is a positive step, both for U.S. agricultural exports to Cuba and for the promotion of Cuban exports to the United States, that the U.S. Department of Agriculture now has an attaché on duty at the U.S. Embassy in Havana.

**6) In the case of agricultural sales to Cuba authorized by the TSRA, explore how U.S. companies licensed to make sales to Cuba could export the product to Cuba through a third country subsidiary, given the limitations imposed by the Cuban Democracy Act.**

Many US companies in the foodstuffs sector want to do business in Cuba, but are more able to meet Cuba’s price point by exporting from Mexican subsidiaries. The Commerce Department and the Treasury Department should explore how, under a licensing exception for agricultural products authorized under TSRA, an exception to the CDA’s prohibition on subsidiary sales might be allowed. Such an exception would benefit U.S. businesses eager to make sales in Cuba, especially in the tourist sector.

**7) Authorize, by a general policy of approval, investments in the renewable energy sector.**

Cuba has made a commitment to developing its renewable energy sector, including the use of wind, solar, etc. U.S. policy in the Western Hemisphere supports the switch to renewable forms of energy, away from dependence on carbon-based production. While

regulatory changes have allowed for research and sales, *the Commerce Department should authorize a general policy of approval for U.S private investors and companies to invest in renewable energy projects in Cuba.*

- 8) Authorize by a general policy of approval, U.S. participation in offshore oil exploration in Cuban waters. This should include approval for U.S. companies to lease or sell U.S.-owned or built oil exploration equipment to Cuban enterprises, recognizing that U.S.-manufactured equipment meets the highest standards of safety. It should also authorize case-by-case approval of U.S. companies' participation in joint oil explorations, again recognizing the quality of U.S. safety protocols and practices.**

Cuba is poised to resume deep water oil drilling in the next two years. U.S. policy should prioritize support for it to be done as safely and professionally as possible, in order to minimize the prospects for spills that might threaten U.S. waters. To do that, we have already licensed the sale and lease of both safety and communications equipment that would enable coordination in case of a spill. *This authorization should be expanded to permit the leasing of U.S.-owned or built drilling equipment in Cuba and elsewhere.* The reality is that Cuba is going to resume drilling because of its own short-term energy needs, and is going to partner with foreign oil companies in that exploration and drilling. It is in the U.S. interest to ensure that drilling equipment used by the Cuban oil sector is up to U.S. quality and safety standards.

Because U.S. competitors are likely to invest in oil exploration in Cuban waters, the U.S. government should also not disadvantage U.S. participation. In fact, given U.S. companies' experience, safety protocols, and practices, U.S. participation would likely reduce the risks of spills or other accidents that might threaten U.S. coastal waters.

- 9) Expand the range of consumer telecommunications software and hardware that U.S. companies are authorized to sell to Cuba by a Commerce Department license exception.**

While the current list of telecommunications equipment that U.S. companies may sell to Cuba is broad, they are barred from selling certain items that would increase access to information on the island. This includes items like software and services with encryption and virtual reality. *The Consumer Communications Devices list could be expanded to include other 5A992 or EAR99 software and hardware that is used for communications purposes, so that these items no longer required a license to be exported or re-imported.* This would allow U.S. telecommunications to further their reach and help more Cubans gain access to technology and information.

## **Recommendations to Expand Health-Related Engagement**

- 1) Eliminate barriers which deny U.S. citizens access to clinically proven Cuban-developed drugs. Ensure, through general licensing, that medical and pharmaceutical**

**companies that receive FDA authorization to proceed with clinical trials of Cuban-developed drugs will also receive authorizations to market the product in the United States if it is approved by the FDA after successful clinical trials.**

Cuba has developed a number of drugs, including a diabetic foot ulcer medication, anti-cancer drugs, and others, that could benefit U.S. citizens. U.S. and other pharmaceutical companies have sought to do clinical testing of these drugs in the United States, and in several cases receive approval for that testing. But testing is expensive, and companies invest in it because they expect to market those drugs that are approved for commercial distribution after clinical trials.

In the case of Cuban medical products, there is no guarantee that a drug that successfully passes clinical trials can be marketed in the United States because companies need to apply for a separate Commerce Department license. *This problem could be solved if the Commerce Department could issue licenses for clinical testing that include a permission for marketing should the FDA approve the drug.* Such a policy would encourage testing and increase the likelihood that Cuban-produced drugs that pass clinical trials could actually benefit U.S. populations, as is the case with other foreign drugs after trials in the United States.

- 2) Conduct outreach to U.S. pharmaceutical manufacturers to make sure they and their legal departments are aware that there is a general policy of approval for export licenses for medical sales, and to address concerns they may have. Arrange a meeting between U.S. manufacturers and Cuban health care sector representatives and importers.**

Despite Commerce Department regulations that include a general policy of approval for licenses for medical sales to Cuba, sales are still limited. Manufacturers and their general counsels need to be aware of current policy. Part of this process would include reaching out to U.S. pharmaceutical manufacturers to make sure they are aware of current policy regarding end use reporting requirements. A meeting should also be arranged between U.S. manufacturers and Cuban health care sector representatives and importers to discuss priority needs and what could be done to eliminate remaining barriers that prevent U.S. companies from responding to Cuban demand.

- 3) Authorize U.S. entities (universities, research centers, and private firms) by general license to collaborate in medical and health-related research and development projects in Cuba, including commercial projects.**

Currently, “non-commercial” research projects are authorized; that restriction should be lifted and all research projects should be authorized by general licenses, especially in the health field. Commercial investment in research will broaden the possibilities and lead the way for new drugs and therapies to be developed that will benefit both the people of Cuba and the United States. These approval processes should be expedited. Cuban

entities should also be allowed to partner with U.S. entities on scientific research grants funded by the U.S. government.

**4) Authorize U.S. pharmaceutical and medical equipment companies to include Cuban hospitals and health centers in their clinical trials.**

By expanding the pool of qualified participants required for testing, this would potentially speed up the approval process of new U.S. drugs, to the benefit of the people of the United States. Cuba's Public Clinical Trials Registry, accredited by the World Health Organization, has experience with testing similar to the U.S. Food and Drug Administration requirements.

**5) Strengthen bilateral cooperation, jointly addressing health emergencies in the United States, Cuba and globally, including natural disasters and epidemics such as Ebola, Dengue and Zika.**

**Recommendations to Strengthen Security cooperation where there are U.S. interests at stake**

**1) Deepen and extend counter-terrorism and counter-narcotics cooperation.**

Based on the recently signed counter-narcotics agreement, improve information sharing processes and exchange of best practices. Invite Cuban counterparts to Coast Guard, DEA, and JIATF-South facilities to understand how the U.S. system works. Request parallel visits to Cuban state institutions.

**2) Assign a Legal Attaché to the U.S. Embassy in Havana and pursue a protocol that allows his or her direct contact with counterparts in the Cuban government for information exchange and requests for assistance in specific cases.**

**3) Build gradually on military-to-military dialogue, perhaps with invitations to Cuban military officers to observe or participate in sub-regional and regional dialogues on issues of mutual interest, including counter-narcotics, terrorism, cyber security, and maritime security.**

**Recommendations to Eliminate or Suspend Programs that Fail to Advance the Cuban People's Well-being, or Improve Human Rights**

**1) Suspend the "democracy promotion" programs now funded through the State Department's Bureau of Democracy, Human Rights, and Labor (DRL) and the National Endowment for Democracy (NED). Many of the programs are wasteful and ineffective. The administration should conduct a review of existing programs to ensure they are consistent with the President's policies to normalize relations with Cuba. A review**

should also examine the effectiveness of existing programs, including whether they are meeting their own goals.

- 2) Request the Office of Management and Budget (OMB) to explore options for re-directing funds now spent on democracy promotion to projects that meet revised criteria and encourage collaboration with Cuba. Under such a system, grants would be made to U.S. groups and individuals who negotiate collaboration with Cubans directly based on mutual people-to-people interests. This includes transparent support to civil society groups engaged in capacity building, research, training, education, journalism, arts and culture, law, and independent business training.

Any program or policy that is carried out under this rubric should be conducted openly, transparently, and with the goal of to expanding contacts between US and Cuban people without interfering in Cuba's internal affairs.

### **Recommendations for Steps toward Normalizing Migration**

- 1) **The Attorney General should exercise her authority to end preferential treatment for Cuban migrants arriving at U.S. borders, while the United States should increase the number of visas it issues for Cubans to obtain legal residence.**

Preferential treatment for undocumented Cuban migrants arriving at U.S. ports of entry is causing problems in Ecuador, Colombia, and parts of Central America. It is difficult to justify current policy when Central Americans fleeing violence are turned away, returned home, or confined here. At the same time, preferential treatment has been a lifeline for many Cubans fleeing economic stagnation at home, caused at least in part by the U.S. embargo.

Given these complex realities, the United States should significantly raise the number of visas it issues for Cubans to obtain legal residence in the United States and should establish new visa programs that permit Cuban professionals to study or work in the United States and then return home. Then the Attorney General should end preferential treatment for Cuban migrants arriving at U.S. borders without a visa.

- 2) **End the Cuban Medical Professionals Parole Program**

This program offers incentives to Cuban doctors working abroad to leave their country and immigrate to the United States. The program is a provocation that provides no benefits to the United States, angers Cuba, and is an obstacle to cooperation on urgent global public health issues.