

HOLDING CUBAN LEADERS ACCOUNTABLE

HEARING

BEFORE THE
SUBCOMMITTEE ON NATIONAL SECURITY
OF THE

COMMITTEE ON OVERSIGHT
AND GOVERNMENT REFORM
HOUSE OF REPRESENTATIVES

ONE HUNDRED FIFTEENTH CONGRESS

SECOND SESSION

—————
JUNE 20, 2018
—————

Serial No. 115–87

Printed for the use of the Committee on Oversight and Government Reform



Available via the World Wide Web: <http://www.fdsys.gov>
<http://oversight.house.gov>

—————
U.S. GOVERNMENT PUBLISHING OFFICE

31–274 PDF

WASHINGTON : 2018

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

Trey Gowdy, South Carolina, *Chairman*

John J. Duncan, Jr., Tennessee	Elijah E. Cummings, Maryland, <i>Ranking</i>
Darrell E. Issa, California	<i>Minority Member</i>
Jim Jordan, Ohio	Carolyn B. Maloney, New York
Mark Sanford, South Carolina	Eleanor Holmes Norton, District of Columbia
Justin Amash, Michigan	Wm. Lacy Clay, Missouri
Paul A. Gosar, Arizona	Stephen F. Lynch, Massachusetts
Scott DesJarlais, Tennessee	Jim Cooper, Tennessee
Virginia Foxx, North Carolina	Gerald E. Connolly, Virginia
Thomas Massie, Kentucky	Robin L. Kelly, Illinois
Mark Meadows, North Carolina	Brenda L. Lawrence, Michigan
Ron DeSantis, Florida	Bonnie Watson Coleman, New Jersey
Dennis A. Ross, Florida	Raja Krishnamoorthi, Illinois
Mark Walker, North Carolina	Jamie Raskin, Maryland
Rod Blum, Iowa	Jimmy Gomez, Maryland
Jody B. Hice, Georgia	Peter Welch, Vermont
Steve Russell, Oklahoma	Matt Cartwright, Pennsylvania
Glenn Grothman, Wisconsin	Mark DeSaulnier, California
Will Hurd, Texas	Stacey E. Plaskett, Virgin Islands
Gary J. Palmer, Alabama	John P. Sarbanes, Maryland
James Comer, Kentucky	
Paul Mitchell, Michigan	
Greg Gianforte, Montana	

SHERIA CLARKE, *Staff Director*

WILLIAM MCKENNA, *General Counsel*

BRICK CHRISTENSEN, *Senior Military Advisor*

KILEY BIDELMAN, *Clerk*

DAVID RAPALLO, *Minority Staff Director*

SUBCOMMITTEE ON NATIONAL SECURITY

Ron DeSantis, Florida, *Chairman*

Steve Russell, Oklahoma, <i>Vice Chair</i>	Stephen F. Lynch, Massachusetts, <i>Ranking</i>
John J. Duncan, Jr., Tennessee	<i>Minority Member</i>
Justin Amash, Michigan	Peter Welch, Vermont
Paul A. Gosar, Arizona	Mark DeSaulnier, California
Virginia Foxx, North Carolina	Jimmy Gomez, California
Jody B. Hice, Georgia	John P. Sarbanes, Maryland
James Comer, Kentucky	<i>Vacancy</i>
	<i>Vacancy</i>

CONTENTS

Hearing held on June 20, 2018	Page 1
WITNESSES	
Ms. Miriam de la Peña, Mother of Hermanos al Rescate Pilot, Mario de la Peña	
Oral Statement	6
Written Statement	8
Ms. Ana Alejandre Ciereszko, Sister of Hermanos al Rescate Pilot, Armando Alejandre Jr.	
Oral Statement	10
Written Statement	12
Mr. Jason Poblete, Attorney, Poblete Tamargo LLP	
Oral Statement	14
Written Statement	16
Ambassador Roger Noriega, Visiting Fellow, American Enterprise Institute	
Oral Statement	34
Written Statement	36
William LeoGrande, Ph.D., Associate Vice Provost for Academic Affairs, Department of Government, American University's School of Public Affairs	
Oral Statement	46
Written Statement	48

HOLDING CUBAN LEADERS ACCOUNTABLE

Wednesday, June 20, 2018

HOUSE OF REPRESENTATIVES
SUBCOMMITTEE ON NATIONAL SECURITY
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM
Washington, D.C.

The subcommittee met, pursuant to call, at 2:07 p.m., in Room 2247, Rayburn Office Building, Hon. Ron DeSantis [chairman of the subcommittee] presiding.

Present: Representatives DeSantis, Amash, Lynch, and Welch.

Also present: Representative Ros-Lehtinen.

Mr. DESANTIS. The Subcommittee on National Security will come to order.

Without objection, the chair is authorized to declare a recess at any time.

We are here today to continue this committee's oversight into U.S. policy towards the Cuban dictatorship.

Almost 6 months ago, I held a field hearing in Miami to examine the Obama administration's failures with regard to Cuba policy. Today we are joined by our fellow citizens who are acutely aware of the failures of that policy. Armando Alejandro, Jr.; Pablo Morales; Mario de la Peña; and Carlos Costa—these are the names of the four men killed in a savage attack by the Castro regime on February 24th, 1996. It is my hope that our Department of Justice will indict Raul Castro and others responsible for this barbarous act.

Armando, Pablo, Mario and Carlos were flying on a humanitarian mission to help desperate men, women, and children fleeing the oppressive Castro regime in makeshift rafts. They were warriors on the front lines of freedom, doing their part in the struggle against the evil totalitarian Cuban Government. These brave men, flying unarmed, were shot down over international waters by Cuban MiGs, a heinous crime that defies comprehension, except we are talking about the Castros. These two gangsters took pleasure in human rights abuses and spreading chaos throughout the region.

Unfortunately, our government has failed to hold Cuba's leaders accountable. In fact, under the Obama administration, the United States released the men convicted for their role in connection with the 1996 attack. One man in particular, Gerardo Hernandez, had his wish come true by the Obama administration, which supported Hernandez in his quest to impregnate his wife with artificial insemination. It would be laughable if it were not so true, but our

government helped the convicted terrorist get his wife pregnant while he sat in federal prison.

To top it off, Hernandez was then released back to Cuba where he received a hero's welcome. It is sickening and it was and is a disgrace.

We are also here today to talk about what the Trump administration has done with regard to Cuba and what it can do in the future because we can do more. We must indict criminals like Raul Castro. We can indict them and place economic sanctions on other senior officials of the Cuban Government. We can get back the fugitives and cop killers like Joanne Chesimard.

However, I am deeply concerned that the bureaucracy in the State Department is purposely disregarding and undermining President Trump's Cuba policies. We may be seeing the final gasp of the holdovers attempting to continue down the failed policy course. The President in his speech in Little Havana last June made it clear. Quote: we will not lift sanctions on the Cuban regime until all political prisoners are freed, freedoms of assembly and expression are respected, all political parties are legalized, and free and internationally supervised elections are scheduled. End quote.

I will make sure to follow up with the President, the Secretary of State, the National Security Council to ensure that all these things happen. This committee will continue to pursue the corrupt bureaucrats who obstruct and enable this regime. We owe it to men like Armando, Pablo, Mario, and Carlos. We owe it to their loved ones. We owe it to those in Cuba who live this nightmare every day.

It is my honor and privilege to have the family members of the men murdered on that day in February 1996 here today as a reminder that the fight for justice continues. We will not forget and we will continue the fight.

Today with us testifying about that fight is Miriam de la Peña. Miriam is the mother of Mario, and we are so honored to have you here to testify. We are also grateful that your husband Mario is here as well. Thank you and God bless.

We are also blessed to have Ana Alejandre Cierieszko. Ana is the sister of Armando, and again, we are very honored to have you here today. I thank you for coming.

We also have Mr. Jason Poblete, a national security and federal regulatory lawyer in private practice, who is an expert in Cuba policy issues and can help us understand what we can do right now to take action against Cuba's leaders.

Next is Ambassador Roger Noriega, who is caught in traffic and also served as Assistant Secretary of State for Western Hemisphere Affairs in the Bush administration. Before that, he was the U.S. Permanent Representative to OAS, the Organization of American States, and he can provide more details about what the regime around the region and throughout the world.

Finally, we have William LeoGrande, Professor of Government and Dean of the American University School of Public Affairs. We appreciate you being here.

Thank you so much for being here, all of you. We look forward to your testimony.

And with that, I would like to recognize the ranking member of the committee, Mr. Lynch, for 5 minutes.

Mr. LYNCH. Thank you, Mr. Chairman. I would like to thank you for holding this hearing to examine the state of human rights in Cuba. I would also like to thank today's witnesses for your willingness—for helping the committee with its work.

Let me begin by expressing my sincere sorrow to the families of the four U.S. crew members whose civilian aircraft was shot down in 1996 by Cuban fighter jets during a humanitarian service mission with Brothers to the Rescue. Ms. Miriam de la Peña, the mother of U.S. pilot Mario de la Peña, and Ms. Ana Alejandre Ciereszko, the sister of U.S. pilot Armando Alejandre, are here with us today and I thank you both for your willingness and strength in offering this subcommittee your important perspectives on human rights accountability in Cuba.

It is clear that the Republic of Cuba remains an authoritarian state whose citizens are subjected to the widespread abuse of human rights by their government. Over the past decade alone, the U.S. State Department has consistently reported serious human rights violations that include the use of threats, physical assault, detentions, and intimidation by the government as a means of limiting the freedom of expression and peaceful assembly and silencing political opposition. Cuban authorities have also routinely engaged in the monitoring of private communications and limitations on freedom of the press. As underscored by the State Department, the free exercise of these and other civil liberties is prohibited in the Cuban constitution when contrary to, quote, the existence and objectives of the socialist state. Closed quote.

Moreover the government has sought to prevent workers from forming independent trade unions and placing stringent restrictions on workers rights. According to the State Department, the majority of human rights abuses have been committed at the direction of the Cuban Government with impunity.

This year witnessed the transition to a new government in Cuba with the resignation of President Raul Castro, and selection of the Cuba National Assembly of Vice President Miguel Diaz-Canel to succeed him as President. While President Castro will remain as leader of the Cuban Communist Party throughout 2021, the inauguration of President Diaz-Canel marked the first time since the 1959 Cuban revolution that a Castro is not leading the government.

In the midst of this political transition, it is imperative that we continue to address the Cuban Government's repression of human rights by building upon the renewed U.S. engagement with Cuba that began during the Obama administration and which has been left largely intact under President Trump. We must further develop a U.S.-Cuba policy that underscores and reflects our longstanding commitment to the advancement and protection of international and universal human rights. This must include the continuation of the bilateral human rights dialogue with Cuban officials that began in 2015, as well as meaningful funding for efforts undertaken by the U.S. Agency for International Development, State Department, and other agencies to support human rights and the development of democratic and civil society in Cuba.

While President Trump proposed zeroing out funding for human democracy programs for fiscal year 2018, the bipartisan omnibus appropriations bill supported by Congress in March ultimately provided \$20 million in funding, the same as in fiscal year 2017.

Our Cuba policy going forward must also work to ensure the safety of U.S. diplomatic personnel deployed on the island. In the aftermath of the still-unexplained injuries suffered by at least 24 employees at the U.S. embassy in Havana in November of 2016, the State Department ordered the departure of all non-emergency embassy personnel and their families to mitigate their exposure to, quote, attacks of an unknown nature. Close quote.

However, in March of this year, the State Department announced a permanent staffing plan at U.S. Embassy Havana under which the mission will now operate with the minimum personnel necessary to perform core diplomatic and consular functions. We must make every effort to keep these personnel safe.

Mr. Chairman, I look forward to the discussions of these issues and other important issues relating to U.S.-Cuba relations with today's witnesses.

I yield back the balance of my time.

Mr. DESANTIS. The gentleman yields back.

I will now recognize the gentlewoman from Florida, who is no stranger to this issue and other issues involving fighting for human rights, Ms. Ros-Lehtinen, for an opening statement.

Ms. ROS-LEHTINEN. Thank you so much, Chairman DeSantis and Ranking Member Lynch. Thank you for convening this important hearing, for allowing me to join you for the second time this year, as we debate U.S. policy toward my native homeland of Cuba.

I would like to thank our witnesses today, all familiar faces. Jason and Roger, thank you for being with us today. Always good to see you again.

Ana and Miriam, thank you for not giving up on your efforts to seek justice for Armando and for Mario. You two represent a united voice of the surviving families of these Brothers to the Rescue pilots who want nothing more than to hold accountable the Cuban regime officials responsible for the murder of these innocent brave men. It has been 22 years since that fateful Saturday when three U.S. citizens and one U.S. permanent resident, all innocent, unarmed civilians, were brutally killed by the Castro regime for simply trying to aid Cubans escaping Castro's illegal grip on power. Carlos Costa, Mario de la Peña, Armando Alejandro, Pablo Morales were heroes in the eyes of the American people and to the Cuban people.

22 years later, how has the United States, their country, honored the memories of these brave patriots? Well, Ruben Martinez Puente, Lorenzo Alberto Perez y Perez, and Francisco Perez y Perez, all Cuban regime operatives, have been indicted in our U.S. courts for their roles in the murderous Brothers to the Rescue shoot-down, but until this day, sadly they have yet to be held accountable. I have urged administration after administration to bring these perpetrators to the United States so that they can be prosecuted in accordance with our laws and justice for this criminal act can be served.

But accountability does not just stop with them. This was an orchestrated attack. And as we know, nothing happens in Cuba without being sanctioned by the Castro regime. And that means Raul Castro himself, which is why I urge our U.S. administration and our courts to go after Raul Castro for his role in the murderous act. The Department of Justice and the Department of State can and must indict Raul Castro and all others involved in the shoot-down.

Yet, each administration since the attack has not moved one inch to hold them responsible. Instead, in its pursuit of normalizing relations with the island, the Obama administration made the monumental error of releasing Cuban spy Gerardo Hernandez—and you have pointed it out—who was convicted of conspiracy to commit espionage and conspiracy to commit murder for his role in the murder of these brave pilots.

Mr. Chairman, in a previous hearing we are so happy that you held in our hometown of Miami, we have already discussed the negative implications of the misguided Cuba policy of the Obama administration, giving concession after concession to a murderous regime in exchange for nada, zip, zilch, nothing. And to this day, that same regime, for it does not matter who leads it, whether it is Castro or Diaz-Canel—that same regime that violated international airspace in order to kill Carlos, Mario, Armando, and Pablo—it remains as repressive as ever, routinely beating, harassing, detaining peaceful protesters and journalists.

Even as President Obama was visiting the island, the human rights abuses remain unchanged, and as our very own State Department's latest Human Rights Report on Cuba points out, there are many, many, many political prisoners in Cuba today.

I laud Ambassador Nikki Haley for her announcement yesterday to withdraw the United States from the U.N. Human Rights Council. Having Cuba serve in the council is a mockery to the mission of that institution, an insult to the Cuban people who day after day are denied their most basic human rights.

This administration has taken concrete, positive steps to reverse President Obama's wrongheaded Cuba policy by clamping down on economic lifelines to the oppressors and their hand-picked military leaders.

However, it can and must do more so that there is no question that this administration truly supports the Cuban people and our cherished ideals and values and not seek a rapprochement with the dictatorial regime.

So I look forward to the witnesses today. I thank you for your leadership, Mr. Chairman. I want to hear about their recommendations to Congress and to the administration. To the Brothers to the Rescue pilots, their families, you will forever be an inspiration to those who are willing to endure great sacrifices for the sake of a free Cuba.

Thank you, Mr. Chairman and Mr. Ranking Member. I am honored that you have allowed me to participate. Thank you.

Mr. DESANTIS. I thank the gentlewoman.

And I am pleased to introduce our witnesses. We do have, as was mentioned, Ms. Miriam de la Peña, who is the mother of Brothers to the Rescue pilot Mario de la Peña. Welcome. We have Ms. Ana Alejandre Ciereszko, sister of Brothers to the Rescue pilot Armando

Alejandro, Jr. Welcome. We have Mr. Jason Poblete, attorney at Poblete Tamargo LLP. Welcome to you. Ambassador Roger Noriega, who is now at the American Enterprise Institute. Glad you made it through the traffic. It was really bad today because I came in about an hour ago and it was a long trip just from the airport. And then Dr. William LeoGrande, Associate Vice Provost for Academic Affairs for the Department of Government at American University School of Public Affairs. Welcome and welcome to you all.

Pursuant to committee rules, all witnesses will be sworn in before they testify. So if you can please rise and raise your right hand.

[Witnesses sworn.]

Mr. DESANTIS. Please be seated.

All witnesses answered in the affirmative.

In order to allow time for discussion, please limit your testimony to 5 minutes. Your entire written statement will be made a part of the record. And as a reminder, the clock in front of you shows your remaining time. The light will turn yellow when you have 30 seconds left and red when your time is up. Please also remember to press the button to turn your microphone on before speaking and to speak into the microphone.

And right now, I would like to recognize Ms. de la Peña for 5 minutes.

WITNESS STATEMENTS

STATEMENT OF MIRIAM DE LA PEÑA

Ms. DE LA PEÑA. Thank you very much, Mr. Chairman. Good afternoon, members of the committee.

I am Miriam de la Peña, and I am here because of the four innocent men from my district of south Florida who were murdered, namely, Armando Alejandro, Jr.; Carlos Costa; Pablo Morales; and my own son, Mario de la Peña.

Their killers are known, but sadly they remain at large.

Ambassador Madeleine Albright at the U.N. General Assembly on March 6th, 1996, shortly after the shoot-down, described it this way, and I quote. The fact is that on February 24th, 1996, the Cuban military knowingly, willingly, and in broad daylight shot down two aircraft that were unarmed and clearly marked as civilian. As Cuban officials were well aware, these aircraft posed no threat to the Cuban people or government. The aircraft were in international airspace and they were destroyed intentionally and in clear violation of international law. Close quote.

The condemnation was echoed by well-known national and international organizations such as the European Union, the U.N. Commission on Human Rights, and its counterpart at the Organization of American States, the U.N. Security Council, the United States Congress, the International Civil Aviation Organization, and my own district, the U.S. Southern District Court of Florida.

Just to cite a few from the reports above, ICAO reaffirmed its condemnation of the use of weapons against civil aircraft in flight as being incompatible with elementary considerations of humanity.

And the U.N. Commission on Human Rights in Geneva, Switzerland reported also in 1996—and I quote—the shoot-down was a premeditated act and that it constituted a violation of the right of life to four people. Close quote.

The evidence supporting the crime committed against three Americans and a legal resident is overwhelming. It was the shoot-down that prompted President Clinton to sign into law the Cuban Liberty and Democratic Solidarity Act of 1996. It is also the reason why the law cites the findings by the U.S. Congress condemning the shoot-down as an act of terrorism by the Castro regime. Congress also urged the President back then to seek in the International Court of Justice indictments for this act of terrorism by Fidel Castro. Close quote.

We could also note that Congress reaffirmed the fact that it is incumbent upon the U.S. Government to protect the lives and livelihood of U.S. citizens, as well as the rights of free passage and humanitarian missions.

With so much evidence at hand, for a crime defined—and I quote the above entities—as a barbaric violation of international law, an extrajudicial killing, premeditated and intentional, using brutal methods, and tantamount to cold-blooded murder, among others, is it not inconceivable that the criminals have gotten away with the murders of four innocent men for the past 22 years? Perhaps declassifying additional information will aid in the pursuit of justice. Or must we die and never see justice served?

I beg those of you in government responsible for our safety and that of our children to do what is necessary to procure justice and put an end to impunity.

Adding fuel to the fire, the families were deeply hurt when Gerardo Hernandez, the only Cuban high ranking military official serving a life sentence in the U.S. for his role in the shoot-down, was released from prison. We felt back then, as we feel now, betrayed when this communist cadre of the Cuban military apparatus was set free and returned to Cuba. Justice was aborted by a stroke of President Obama's pen. Should a U.S. President defend and respect the rights of American citizens, or should he favor the victimizers?

Finally, Mr. Chairman, members of the committee, it is my hope that the systematic human rights abuses taking place in Cuba will soon come to an end and that our President will be the first President in nearly 6 decades to shake the hand of a Cuban President freely elected by the people who respects and defends the Universal Declaration of Human Rights.

I thank the committee for the opportunity granted me on behalf of our loved ones, Armando, Pablo, Carlos, and Mario. God bless the United States of America.

[Prepared statement of Ms. de la Peña follows:]

I am Miriam de la Pena and I'm here because of a crime committed against four innocent men from the Southern District of Florida. Namely; Armando Alejandro, Jr., Carlos Costa, Pablo Morales, and my own son, Mario de la Pena. Their killers are known, but sadly they remain at large.

As described by Ambassador Madeleine Albright at the UN General Assembly on March 6, 1996,

....."The fact is that, on February 24, (1996), the Cuban military knowingly, willfully, and in broad daylight, shot down two aircraft that were unarmed and clearly marked as civilian. As Cuban officials were well aware, those aircraft posed no threat to the Cuban people or government. The aircraft were in international airspace. And they were destroyed intentionally and in clear violation of international law."

The condemnation was echoed by prestigious National and International organizations such as:

The European Union
 The UN Commission of Human Rights and its counterpart at
 The Organization of American States
 The UN Security Council
 The United States Congress
 The International Civil Aviation Organization ("ICAO") and,
 The US Southern District Court of Florida

Just to cite two of the above, on its Report of June 27, 1996, ICAO reaffirmed, ..."its condemnation of the use of weapons against civil aircraft in flight as being incompatible with elementary considerations of humanity....." and,

The UN Commission on Human Rights reported on October 7, 1996 that, "... the shoot down was a premeditated act and that it constituted a violation of the right to life of four people."

The evidence supporting the crime committed against three Americans and a legal resident is overwhelming. It was the shoot down that prompted Pres. Clinton to sign into law the Libertad Act. It is also the reason way the Law cites the statements by the U.S. Congress condemning the shoot down as an "act of terrorism by the Castro regime" (Title I Section 116 (b) (1). Congress also urged the President to seek, "...in the International Court of Justice indictments for this act of terrorism by Fidel Castro". (Title I Section 116 (b)(3).

It is also relevant to note that in it, Congress reaffirmed the fact that, "It is incumbent upon the U.S. Government to protect the lives and livelihood of U.S. citizens as well as the rights of free passage and humanitarian missions". Title I Section 116 (a)(13)

With so much evidence at hand for a crime defined as:

"extrajudicial killing premeditated and intentional",
 "excessive use of force",
 "use of brutal methods"
 "barbaric violation of international law",
 "tantamount to cold-blooded murder",

Isn't it inconceivable that the criminals have gotten away with murder for the last 22 years? Perhaps declassifying pertinent documents will aid in the pursue of justice. Or must we die and never see justice served? I beg those of you in government, responsible for our safety and that of our children, to do what is necessary to procure justice and put an end to impunity.

Adding Fuel to the fire, the families were deeply hurt when Gerardo Hernandez, the only Cuban high-ranking military official serving a life sentence in the U.S. for his role in the shoot down was released from prison. We felt, back then, as we feel now, betrayed when this communist cadre was set free and returned to Cuba. Justice was aborted by a stroke of Pres. Obama's pen!

Should a U.S. President defend and respect the rights of American citizens or favor their victimizers?

Finally, Mr. Chairman, members of this Committee, it is my hope that the systematic human rights abuses taking place in Cuba will soon come to an end and that our President will be the first US President in nearly 6 decades to shake the hand of a Cuban President freely elected by the Cuban people. A President who respects and defends the Universal Declaration of Human Rights.

I thank the Committee for the opportunity granted me on behalf of our loved ones. God Bless the United States of America.

Mr. DESANTIS. Thank you.
 Ms. Ciereszko, you are up for 5 minutes.

STATEMENT OF ANA ALEJANDRE CIERESZKO

Ms. CIERESZKO. Good afternoon, Mr. Chairman and committee members. Thank you for having this hearing today.

My brother Armando Alejandro, a marine and Vietnam veteran, was murdered by the Cuban Government on February 24th, 1996, together with Carlos Costa, Mario Manuel de la Peña, and Pablo Morales.

I am here representing Armando's widow, daughter, sisters, 96-year-old mother, and many family members. 22 years after the shoot-down, we are still searching for justice. We were dealt a very harsh blow when Gerardo Hernandez, convicted of conspiracy to murder in the shoot-down, was returned to Cuba by President Obama.

What I brought to you today is a compilation of evidence that supports the guilt of the many responsible for these murders. This information, reports, indictments, transcriptions of communications, audio tapes, et cetera, should bring us a little bit closer to justice. We provided most of this evidence to the FBI in 2002. In 2003, the U.S. District Court, Southern District of Florida, issued indictments charging the head of the Cuban air force, Ruben Martinez Puente, and the MiG pilots, the brothers, Lorenzo Alberto and Francisco Perez-Perez, with conspiracy to kill U.S. nationals, destruction of aircraft, and murder. These indictments marked the end of action by the U.S. Government on these murders.

We seek additional indictments against many others responsible for the shoot-down. First on the list is Raul Castro, who at the time of the shoot-down was the chief of the Cuban armed forces. Castro no longer enjoys protection as head of state. There is an audio recording of a radio interview in which Castro accepts responsibility for these murders. There is also testimony that the Cuban air force had practiced shooting down small planes days before February 24th.

Various members of the Cuban intelligence and armed forces at the time of the shoot-down should also be brought to justice. These include Eduardo Delgado Rodriguez, Brigadier General of the Cuban Directorate of Intelligence; Emilio Palacios, pilot of the MiG 23; Ulises Rosales del Toro, chief of the FAR; and others.

We are also looking for the political will on the part of our government to transmit to Interpol the names of the pilots and the general who gave the order, all of whom have pending indictments in U.S. courts. We need to make sure that they are apprehended and brought to trial.

We are also requesting information on the role of Ana Belen Montes in the shoot-down. She is currently serving a 25-year sentence in a U.S. correctional facility after having pled guilty to charges of espionage on behalf of the Cuban Government. Montes was the top Cuban analyst for the Defense Intelligence Agency and advised President Clinton on the response to the shoot-down.

We are also pursuing information on Rolando Sarraff Trujillo who was exchanged by President Obama for Alan Gross at the same time as when the three of the five convicted spies of the

Wasp Network were released. Mr. Sarraff was accused of being an agent of the CIA and served 20 years in a Cuban jail. He has never been made available to the media, and nothing is known about his whereabouts. We believe he may have information on the shoot-down and would like our government to make him available to us.

To summarize, we are seeking indictments, starting with Raul Castro. We are requesting that the names of those already indicted be provided to Interpol. We are pursuing additional information from the testimony of others in our search for the truth.

We hope that you, this committee, understand that this is not a Cuban issue. Carlos and Mario were born in the United States. My brother Armando was an American citizen, a marine and Vietnam veteran. And Pablito was a U.S. resident. As Americans, they deserve the justice that is their due.

Thank you very much for this opportunity.

[Prepared statement of Ms. Ciereszko follows:]

United States House of Representatives
Committee on Oversight and Government Reform
Subcommittee on National Security
Hearing: Holding Cuban Leaders Accountable
Wednesday, June 20, 2018
Rayburn House Office Building – Room 2154

Statement by Ana Alejandre Cierieszko

Good Afternoon Mr. Chairman and Committee Members. Thank you for conducting this hearing today.

My name is Ana Alejandre Cierieszko. My brother Armando Alejandre, a U.S. Marine and Vietnam veteran, was murdered by the Cuban government on February 24, 1996, while on a humanitarian search and rescue mission for Cuban rafters fleeing the island. Armando, Carlos Costa, Mario Manuel de la Pena and Pablo Morales were flying two unarmed civilian aircrafts over the international waters of the Florida Straits when Cuban MiGs shot them down.

I am here representing Armando's widow, daughter, sisters, 96-year-old mother, and many family members. Twenty-two years after the shoot down, we are still searching for justice. We were dealt a very harsh blow when Gerardo Hernandez, convicted of conspiracy to commit murder in the shoot down, was returned to Cuba when President Obama reestablished diplomatic relations. But we will not give up.

What I bring you today is a compilation of evidence that supports the guilt of the many responsible for these murders. This information we believe is enough to bring us a little bit closer to justice in this case and it consists of reports, indictments, transcriptions of communications, audiotapes, etc. It is contained in a flash drive that I am providing to each of you.

Most of this documentation was provided by us to the FBI in 2002. In 2003 the US District Court, Southern District of Florida, issued indictments charging the head of the Cuban Air Force, Ruben Martinez Puente, and the MiG 29 pilots, Lorenzo Alberto Perez-Perez and Francisco Perez-Perez, with Conspiracy to Kill US Nationals, Destruction of Aircraft, and Murder. These indictments marked the end of action by the US government in these murders.

Today we seek additional indictments against many others responsible for the shoot down. First on the list is Raul Castro, who at the time of the shoot down was the chief of the Cuban Armed Forces. Castro no longer enjoys protection as head of state and proof of his complicity in the shoot down includes an audio recording of an interview in Radio Rebelde in which he accepts responsibility for these murders. It also includes testimony that the Cuban Air Force had practiced shooting down small planes days before February 24, 1996.

Various members of the Cuban intelligence and Armed Forces at the time of the shoot down should also be brought to justice. These include: Eduardo Delgado Rodriguez, Brigadier General of the Cuban Directorate of Intelligence; Emilio Palacios, pilot of the MiG 23; Ulises Rosales del Toro, Chief of the FAR, and others. Their names, and the evidence against them, is provided in the documentation you will receive.

We are also looking for the political will on the part of our government to transmit to Interpol the names of the pilots who shot down the aircraft and the general who gave the order, all of whom have pending indictments in US courts. We have requested this repeatedly to all presidential administrations after the shoot down and nothing has happened. We need to make sure that these names are made available to countries that have extradition treaties with the US and that they are apprehended and brought to trial for these murders.

We are also requesting information on the role of Ana Belen Montes in the shoot down. She is currently serving a 25 year sentence in a US correctional facility after having pled guilty to charges of espionage on behalf of the Cuban government. Montes was the top Cuban analyst for the Defense Intelligence Agency and advised President Clinton on the response to the shoot down.

We are also pursuing information on Rolando Sarraff Trujillo who was exchanged by President Obama for Alan Gross in December 2014, at the same time that three of the five convicted spies of the Wasp Network were released. Mr. Sarraff was accused by the Cuban government of being an agent of the CIA and served 20 years in a Cuban jail. He has never been made available to the media since the exchange and nothing is known about his whereabouts. We believe he may have information on the shoot down and would like our government to make him available to us.

To summarize - we are seeking indictments, starting with Raul Castro; we are requesting that the names of those already indicted be provided to Interpol, we are pursuing additional information from the testimony of individuals that could help advance our search for the truth. We hope that you, this Committee, understand that this is not a Cuban issue. Two of the murdered men were born in the United States, my brother was an American citizen, a Marine, and Vietnam veteran, and the fourth was a US resident. As Americans, they deserve the justice that is their due.

Thank you very much for this opportunity.

Mr. DESANTIS. Thank you.
Mr. Poblete, you are up.

STATEMENT OF JASON POBLETE

Mr. POBLETE. Holocaust survivor and Nobel laureate Eli Weisel said, "to forget the dead would be akin to killing them a second time." So thank you, Mr. Chairman, Mr. Ranking Member, and members of the committee for holding this important oversight hearing on justice for American victims of Cuban communism.

Since the World War II Nuremberg Tribunals, international systems, national courts, and laws the world over have evolved so that today lawyers have better tools, albeit imperfect, to exact justice against violators of universally accepted fundamental freedoms. Chile's Pinochet, Yugoslavia's Milosevic, Peru's Fujimori, Panama's Noriega, Brazil's Lula Da Silva, Rwanda's Ntaganzwa, and many other former government officials have come face to face with Lady Justice. These are not symbolic moves. Rather, they advance the cause of justice and the rule of law. These are fundamental building blocks of a civilized society.

Yet, as American Airline planes land in Cuban airports, Carnival and Norwegian ships dock at Cuba ports, and Marriott International manages four hotels with the Cuban military, American families harmed by Cuban officials are increasingly concerned that their cases have been forgotten. Murder, torture, forced disappearances, hostage taking, as well as property confiscations unparalleled in the history of the western hemisphere are some of the crimes that have been committed against American citizens. My message to these Cuba criminals: justice will be done. America will be coming for you.

The Brothers to the Rescue shoot-down is a good example of justice delayed, a delay that has harmed the cause of justice throughout the Americas. It is an invitation to autocrats to target America. That has been the case recently in Venezuela and in Nicaragua. The United States must indict Raul Castro and co-conspirators under U.S. law for the Brothers to the Rescue murders. The United States and other responsible stakeholders must also redouble efforts to track, investigate, indict any Cuban official for crimes against Americans.

The concerns of Americans tortured in Vietnam by the Cubans, the Brothers to the Rescue families that are here with us, and the thousands of other Americans who were victims of Cuban communism — their opinions and their values are just as important as those of American Airlines, Marriott, Carnival, Norwegian, the U.S. Chamber of Commerce, and others who advocate engagement with Cuba. All Americans deserve equal access and treatment under the law.

Cuba will never be China or Vietnam of the Americas. It is an island of 10 million people run by bad and corrupt central planners. It is not a paradise. It is a gulag. It is a Potemkin village. When Americans visit, they only see what the police state wants them to see. The Communist Party does not like Americans, free markets, private property, or the rule of law. Americans who they perceive as a threat, as Cuba has done since 1959, will be targeted.

That is why it was extremely disconcerting but not surprising when I learned that the State Department was investigating via a statutorily required accountability review board the alleged attacks against Americans stationed at Post Havana.

Justice for the victims of the Brothers to the Rescue shoot-down is a linchpin case for other Americans seeking justice for a wide range of crimes committed by Cuban outlaws. U.S. attorneys need full access to all information. The declassification process should begin swiftly. The safety of Americans I believe depends on it.

Interpol red notices should be issued for Cuba international outlaws for existing indictments, and if legally possible, the United States should rescind whatever was promised to Cuba in exchange for five Cuban spies released from U.S. federal prison. One of these criminals who was directly involved in the Brothers to the Rescue shoot-down said upon his release, I will do it again if I have to.

Removing Cuba from the state sponsors of terrorism list was a grave mistake and, based on the public record, reckless. It undermined U.S. policy goals, but also set back the cause of justice as has failing to effectively enforce many other U.S. laws.

For example, nine sections of the Libertad Act have been poorly implemented and parts of it mostly ignored by both Republican and Democratic administrations. It is not, as critics claim, however, an outdated law that does not work. Laws work when laws are enforced.

President Donald Trump's 2017 reorientation of U.S. policy was an excellent development, decades overdue. Senior executive agency officials and presidential advisors should robustly execute President Trump's national security presidential memo number 5, one that puts, quote, national security and foreign policy interests first.

Similarly, as the Congress seeks rigorous enforcement of the global Magnitsky Act, CAATSA sanctions, it should seek the same for statutes guiding policy toward a regime with American blood on its hands.

Finally, beyond the more than eight recommendations offered in my prepared remarks for the record, the Trump administration should seriously consider creating an interagency task force to track down international outlaws in the Americas. Access to the U.S. market is a privilege not a right. International outlaws belong behind bars. They and in some cases their family members should never be allowed to vacation in America or, worse, freely move about our country as agents of a totalitarian police state.

[Prepared statement of Mr. Poblete follows:]

**Prepared Remarks by Jason I. Poblete¹
Committee on Oversight and Government Reform
Subcommittee on National Security
U.S. House of Representatives**

June 20, 2018

Holocaust survivor and Nobel laureate Eli Weisel wrote in his memoir: “to forget the dead would be akin to killing them a second time.” So thank you, Mr. Chairman, Mr. Ranking Member, and members of the National Security Subcommittee, for holding this important oversight hearing on finding justice and helping bear witness for American victims of Cuban Communism.

In the brief time I have for prepared remarks, I will focus on a few steps that Congress and the Trump administration can take to start holding Communist Cuban regime officials to account for crimes against American citizens.

Former Heads of State, Other Former Government Officials Are Being Held to Account

Former Peruvian President Alberto Fujimori spent 10 years in jail for human rights abuses. Former Panamanian strongman Manuel Noriega spent many years in US federal prison for drug trafficking, racketeering, and money laundering, and later, more time in a Panamanian prison. Until the day he died, Chile’s Augusto Pinochet spent the last years of his life fending off several legal battles for his involvement in gross violations of fundamental rights. As recently as two weeks ago, the Trump administration extradited to Panama former President Ricardo Martinelli to face justice in Panamanian courts for the Panamanian crimes of political espionage and embezzlement.

¹ Attorney in private practice at PobleteTamargo LLP located in Alexandria, Virginia; former vice-chair of the American Bar Association’s (ABA) International Law National Security Committee (2011-12); Federalist Society, member; Juris Doctor, George Mason University; masters degree, Georgetown University; he represents clients on domestic and international transactions, including compliance with U.S. export controls, economic sanctions, and related legal matters in these fields; a national security law and federal regulatory lawyer, he is also currently representing unlawfully detained persons held in Iran’s notorious Evin Prison and has advised or advocated on behalf of political prisoners in other nations.

Former senior government officials in other regions of the world have also come face-to-face with Lady Justice. In Iraq, in 2005, Saddam Hussein was tried by Iraqi judges² and was sent to the gallows for his crimes against the people of Iraq. There have also been several international tribunals under the United Nations system that has held many former leaders to account. The International Criminal Tribunal for the former Yugoslavia (ICTY), the International Criminal Tribunal for Rwanda (ICTR), the Extraordinary Chambers in the Courts of Cambodia (also known as the Cambodia Tribunal or the Khmer Rouge Tribunal), and the Special Court for Sierra Leone, are a few of these international justice mechanisms.

Finally, earlier this year, former Brazilian President Lula Da Silva started to serve a 12-year prison sentence for corruption in connection to the Odebrecht case – a multi-national law enforcement effort that included U.S. involvement. The Odebrecht scandal set off a political contagion in Latin America. It has disrupted political systems throughout the Western Hemisphere and continues to have far-reaching implications. More importantly, good legal precedent is being created.

Besides the higher profile cases of former autocrats, dictators, and senior foreign government officials, mid- and lower level foreign government officials have also been held to account in U.S. courts for a wide variety of crimes.³

Most of these types of cases rarely, if ever, are the subject of mainstream news, but justice is being meted out, usually imperfectly, case-by-case, nation-by-nation. If the cases are followed

² Planning for what would become the Supreme Iraqi Criminal Tribunal (SICT) or the High Iraqi Tribunal started at least a year or more before the 2003 liberation of Iraq. The Working Groups included American and Iraqi jurists in exile as well as other legal experts. For more information see "New State Department Releases on the 'Future of Iraq Project,'" Report of the Working Group of Transitional Justice in Iraq and the Iraqi Jurists' Association (available at <https://nsarchive2.gwu.edu/NSAEBB/NSAEBB198/index.htm>, last accessed June 15, 2018).

³ Many of the recent prosecution of foreign officials under U.S. law has been based on actions taking place in the United States. A survey of these case law shows that lower-level or former consular or diplomatic officials and have been charged with crimes such as money laundering, fraud, bribery, drug charges and espionage. Another group of cases have been brought in U.S. federal courts, usually civil suits by plaintiff against officials or former officials of foreign governments accused of atrocity crimes committed outside the United States. To varying degrees, both sets of cases present legal and policy challenges arising under the statutory doctrine of foreign **sovereign** immunity and the federal common law doctrine of foreign **official** immunity.

through on, those processes can help advance U.S. foreign policy interests and serve as a warning to would-be bad actors that America will lead in this space and that international scofflaws will be held to account for a variety of crimes. Indeed, stories generated in foreign media outlets that a former diplomat or other senior official is sitting in an American jail for human trafficking, labor abuses, and other crimes can serve as a potential deterrent to future foreign government officials that access to the U.S. market is a privilege, not a right. If you break our laws, sovereign immunity is no longer an iron-clad guarantee of escaping justice.

These are some of the examples of how responsible stakeholders have held to account former foreign government officials for a wide variety of atrocity crimes and other violations of individual fundamental freedoms or human rights. Each mechanism is a unique response to particular equities and political circumstances that used legal processes and doctrines, some that have developed since the World War II Nuremberg Tribunals that were created pursuant to the London Charter of the International Military Tribunal (IMT) on August 8, 1945.

In the more than 70 years since Nuremberg, crimes against peace, war crimes, and crimes against humanity, in some form, have made it into international and U.S. jurisprudence. There have been many successes in the international legal space since Nuremberg, and many human rights abusers have been held to account. However, there remains a lot of work to do, I believe mostly in national courts, to help advance the cause of justice.

Another piece of good news is that bad actors know that the doctrine of sovereign immunity in responsible nations such as the United States is no longer a guarantee or license to act with impunity. While I have no empirical data to prove this, nation-states with strong legal systems whose policymakers and jurists commit to holding international outlaws to account has a deterrent effect over the long run. The United States has such a legal system, one that has led the way in courtrooms across the nation and in forums such as the this Congress, to remind human rights abusers that, sooner or later, they may be exposed and held to account.

While lives have been saved, international outlaws continue to use the “shield of state” to conduct criminal activities including human trafficking, drug dealing, terrorism, various sort of

criminal conspiracies, child labor, as well as the most heinous of crimes, genocide, among others. Countless lives have been lost because responsible stakeholders did not move quick enough or, worse, they have forgotten about the victims.

To advance the cause of justice, political will and, sometimes where loss of life is not imminent, patience is essential. However, we must never be ambivalent. International outlaws crave ambivalence – they depend on it. I believe this has been the case in the matter of the Brothers to the Rescue terrorist attack, a brutal killing by senior Cuban officials of American citizens. This, in turn, has been a signal to other international outlaws including heads of state that, if you wait long enough, America will forget and impunity prevails.

There are many challenges to bring to account Cuban regime officials. However, as in any conflict, there are steps – inside and outside of Cuba – that responsible stakeholders are duty-bound to take in helping to bring about an end to the source causing harm. Sometimes it can be done in a court of law, but most of the time it also requires bold policy action, by those in a position to do so, to stop or minimize these harms from happening in the first place. The United States cannot do this alone, nor should we need to. We must first focus on American nationals and American interests; however, the approach should be multinational in scope.

For example, the world witnessed in horror when, in 1994, in Rwanda where potentially 1,000,000 Tutsis and other Rwandans were butchered, literally with machetes, in just approximately four months. This genocidal mass slaughter breaks down thusly: about 8,000 people a day, 333 lives an hour, or 5 lives a second. ¾ of the Tutsi population was eliminated. Responsible stakeholders debated many options in a complex situation where, literally, seconds counted.

I've had the pleasure of meeting several times with a judge with the War Crimes Chamber in the Court of Bosnia-Herzegovina and one of the leading jurists in Rwanda. His account of the Rwandan tribunal process, and its aftermath, has been a sobering reminder that national courts of law, or tribunals, are not a cure all but does provide some relief. However, these legal

mechanisms are no substitute for action and strong political will that is needed to, first and foremost, bring the suffering to an end.

While damage caused by Cuban Communism has, perhaps, not reached the numerical levels or the brutalities of the Rwandan genocide, the harm does exist. It is subtle, but pervasive, and it extends beyond the island gulag. Many victims and family members suffer in silence. They think the world has forgotten. Others, like these brave families here today, speak for them and their loved ones. Unless you've lived under Communist rule, or personally know those who have, you cannot imagine the cruelty of that evil ideology. It is real. It is damaging. And billions still suffer under its yoke.

I strongly agree with Ambassador David Scheffer, who during the Clinton Administration, served as America's first U.S. Ambassador-at-Large for War Crimes when he said that victims and family members do not want "truth and reconciliation" they want justice. While there may be a place for "truth and reconciliation" in a future Cuba, Americans and their families harmed directly or indirectly by the Cuban regime want justice. And they have waited for far too long.

American victims and family members of victims of Cuban Communism do not want impunity or a watered-down process that gives international outlaws a way out, such as the American victims and loved ones targeted by FARC terrorist groups in Colombia. Americans and other victims of Cuban Communism do not want a "peace" agreement or other process that whitewashes decades of terrorist acts and other criminality.

As American Airlines planes land in Cuban airports, Carnival Cruise lines ships dock at Cuban ports, or the Marriott Corporation manages hotels with the Cuban military, American families whose loved ones were harmed by the brutal regime are growing increasingly concerned that they and their loved ones have been forgotten.

Harming Americans, A Feature of Communist Cuba Since 1959

The Brothers to Rescue (BTTR) shoot down, resulting in the murder of Carlos Costa, Armando Alejandro, Mario de la Peña and Pablo Morales is a good example of justice delayed, one that

harms the cause of justice throughout the Americas and that invites other autocratic governments to target American citizens. The facts of the heinous attack are generally well known, but the entire story is not. Documents must be declassified and indictments moved in short order.

Former Cuban leader and head of the Revolutionary Armed Forces, Raul Castro, likely ordered the terrorist attack, though the story is much more sinister. Fidel Castro, Raul Castro, and other co-conspirators who still sit atop the Cuban Communist Party plotted years in advance.

It was, and remains, state policy of the Cuban Communist Party to target American citizens who they deem a threat. There have been many Congressional hearings on the BTTR case,⁴ several oversight and executive branch investigations, and even attempts to indict Raul Castro and others. Indeed, the body of evidence against Raul Castro, several MINFAR Generals, and other senior officials is strong. Yet the strength of what we have in evidence has not been matched by the political will to move the process forward.

Beyond the need for action against Raul Castro and co-conspirators for the BTTR shoot down, the United States should redouble efforts to track, investigate and indict other high-ranking and mid-level regime officials who have played a role in harming American citizens and interests since 1959. This includes seeking the support and cooperation of responsible nations throughout all phases of the process.

An indictment in the BTTR case can help advance other U.S. policy goals with respect to Cuba, and the Americas. It will lay a foundation that will be vital for other American victims of Cuban Communism to find justice for crimes, including atrocity crimes, perpetuated by the Communist government and those who support them.

⁴ For a good primer on early Congressional oversight efforts in the BTTR matter, see "Shoot-Down of the Brothers to the Rescue Planes," hearing before the Subcommittee on Crime, Committee on the Judiciary, U.S. House of Representatives, 106th Congress, First Session (July 15, 1999); transcript available at http://commdocs.house.gov/committees/judiciary/hju63608.000/hju63608_of.htm (last accessed June 13, 2018).

The BTTR shoot down happened in 1996, but Americans were also killed in Cuba during the early phases of the takeover. These attacks took place in Cuba and, during the Cold War, in faraway places such as Africa and Asia.

During the Vietnam war, for example, Cuban agents tortured American servicemen and U.S. Government workers in Vietnam. Some of these veterans are still with us and have tried to secure support from the U.S. Department of Defense, the Department of State, and other U.S. agencies for information about these cases. Yet, for reasons known to only a handful of U.S. government officials, these information-gathering efforts appear to have also been, as in the BTTR, stymied.

Along with the BTTR case, the Vietnam torture case is one of the more egregious examples of crimes against Americans by Cuba, one that rises to the level of a war crime.

Dubbed the “The Cuban Program”⁵ it was used against Americans serving in Vietnam to test experimental domination techniques. Cuban state security agents utilized these methods on close to 20 American POWs held in Hoa Lo Prison (also called “the Zoo”) in North Vietnam from 1967-1968.

American POWs were subject to weeks of vicious beatings, unrelenting psychological torture, electroshocks, and solitary confinement. POWs testifying before the House International Relations Committee (now the House Foreign Affairs Committee) identified the head of the Cuban torture team as Fernando Vecino Alegret, who later became Cuba’s Minister of Higher Education. I recently spoke with a leading Cuban resistance leader in Cuba who says that Alegret is alive and well, living in Havana. He lives a few blocks from the Embassy of Poland.

These victims and their family members could have allowed this issue to go away, but they have opted to fight for justice. They deserve answers and the U.S. government should give them

⁵ “The Cuban Program: Torture of American Prisoners by Cuban Agents,” hearing before the Committee on International Relations, U.S. House of Representatives, 106th Congress, First Session, Thursday, November 4, 1999 (transcript available at <https://www.gpo.gov/fdsys/pkg/CHRG-106hhrg65278/pdf/CHRG-106hhrg65278.pdf>).

information so they, too, can pursue the men and women who engaged in some of the most cruel, degrading, and inhumane treatment against Americans citizens.

According to *Cuba Archives* -- one of the leading think-tanks engaged in the documentation of Cuban atrocity crimes and other gross violations of human rights -- at least 21 American citizens have been executed, assassinated, or disappeared, scores remain unaccounted for. At least eight (8) Americans have been assassinated by firing squad; another 11 extrajudicial assassinations, forced disappearance and politically-induced suicides. Of cases that *Cuba Archives* and other groups⁶ have reviewed to date, a process made difficult because of a lack of access to Cuba, there are at least 50 documented cases that warrant further review. Many victim advocacy groups believe that the number of Americans harmed by the Cuban Communists is much higher.

Other American victims of Cuban Communism include U.S. Ambassador John Gordon Mein, who was ambushed in Guatemala City by a Cuba-trained left-wing paramilitary group. Ambassador Mein's car was pulled over, he was dragged out of the vehicle, and as he tried to escape was shot multiple times in the back. Rudolf Anderson, Jr., Robert Ellis Frost, Paul Joseph Hughes, Leo Francis Baker, Geoffrey Sullivan, Frank Thomas Connor, Anthony Zarba, and many other Americans yet unaccounted for met similar fates at the hands of Communist Cuban operatives or others trained and dispatched by Cuba to harm Americans.

It has also been reported that U.S. personnel were killed because of Americans acting as spies for the Cuban regime. The most notorious and harmful of these in recent history is Ana Belen Montes, a senior Defense Intelligence Agency (DIA) analyst now serving a 25-year sentence in a Texas federal prison for her actions against our nation on behalf of her Cuban masters.

⁶ Other groups that have studied or worked on this issue include the Directorio Democrático, *Inspire America*, *The White Rose Institute*, *Cuban American National Foundation* (CANF), *Cuban Liberty Council* (CLC), *Cuba Study Group* (CSG), *Bay of Pigs Veterans Association*, *International Committee of Former Political Prisoners of Cuba*, *Plantados hasta la Libertad de Cuba*, *Casa del Preso*, *Presidio Político Histórico*, among many others.

For several years during the latter half of the 1980s this traitor who, to date, has yet to express one ounce of remorse for what she did, routinely provided Cuba with information on El Salvador's Armed Forces and the U.S. advisors embedded with them. In a March 1987 incident, a major base in El Salvador was attacked a mere three weeks after Montes visited the secret facility. Sixty-eight Salvadoran soldiers and their Green Beret adviser were killed during the ambush. How many more Americans have been killed as a result Communist Cuba's long relationship with Ana Belen Montes and other U.S. spies? It is my understanding that a full accounting has yet to be done.

The Cuban regime also continues to protect many fugitives from U.S. law, including a Black Liberation Army terrorist involved in the 1973 murder of New Jersey state trooper Werner Foerster. Rather than serving a life sentence for the crime, Jo-Ann Chesimard, the first woman placed on the FBI's Most Wanted Terrorist List, and only the second domestic terrorist, escaped from prison in 1979 and has been living the good life in Communist Cuba since at least the early 1980s.

Additional crimes against Americans include forced removal from lands and homes owned by thousands of U.S. citizens who lived in Cuba. Under customary international law, when a foreign government takes or expropriates property from an American, it is duty bound to pay. To this day, Cuba has refused to pay American families billions of dollars for properties, homes, and businesses it stole from Americans, sometimes by using deadly force.

Injuries Sustained by Americans at US Embassy Post Havana: New Victims?

Under U.S. law,⁷ then Secretary of State Rex Tillerson empaneled an Accountability Review Board (ARB) to investigate alleged attacks targeting U.S. Embassy Havana employees resulting in the drawdown of embassy staff. President Donald Trump, National Security Advisor John Bolton, and Secretary of State Mike Pompeo have committed to not only figuring out what is happening to American diplomats in Cuba but, I hope, holding to account anyone found to have injured Americans by design or via negligent use of monitoring technology.

⁷ 22 U.S.C. 4831

These alleged attacks on American diplomats serve as a 21st century reminder, much as the Brothers to the Rescue attack in 1996, that certain people atop Cuba's Communist system are not responsible stakeholders, but rather, international outlaws. Cuban officials, at a minimum, failed to live up to their duty under Vienna Convention for Diplomatic Relations (1961) and other international norms, which could subject Cuba to a legal action by the United States at the International Court of Justice at The Hague.

But before the United States can even map out what do to in response to Cuban attacks or negligence, it must get to the bottom of what happened or is happening to Americans in Cuba. Americans traveling to Cuba should have full information before making travel plans.

Some experts are fueling the narrative that senior regime officials were not involved or did not know what occurred. If so, this is somewhat alarming. Cuba is an autocratic government in succession. If they truly do not know what happened, then it could be a sign that senior officials are losing control of its internal security apparatus and may become more lethal and threatening to U.S. and regional interests.

To Advance the Cause of Justice for Americans, Start By Enforcing U.S. Law

Pursuing indictments in the Brothers to the Rescue terrorist attacks should've been done a long time ago. It would've set a proper precedent from which to do a whole lot more for many victims of Cuban Communism. There is still time to do the right thing.

An excellent first step includes taking a combination of steps that must include BTTR indictments, issuing INTERPOL Red Notices and, if legally possible, rescinding whatever was promised to Cuba for the release from U.S. custody of Cuban spy and international outlaw, Gerardo Hernandez. Besides espionage, Hernandez was indicted for conspiracy to commit murder in the BTTR shoot-down. In an interview from Cuba upon his release, Hernandez said coldly: "I will do it again if I have to."

Hernandez, and many others like him, was a member of a large Cuban spy network operating in the United States that, among other things, helped Cuba sell or provide intelligence to the likes of Iran, North Korea, Russia, China, and non-state actors such as Hezbollah and Hamas.

U.S. Attorneys need complete access to all documents that detail what the U.S. government knows,⁸ and does not know, about other Cuban actors who may have been involved in a criminal conspiracy to harm Americans. The declassification process should begin swiftly. The safety of American lives may depend on it. This enterprise is part of an international web with ties to Venezuela, Nicaragua, and other nations that developed over the course of many years to attack Americans active in the cause of liberty for Cuba.

The BTTR families deserve to know why the response from the Clinton administration to the brutal murder of their loved ones was so anemic. These families also deserve to know why the Bush administration did not move on BTTR indictments when we had several of the criminal masterminds in U.S. custody. Moreover, why did the Obama administration send these international outlaws back to Cuba and under what terms?

A Brief Note on Sovereign Official Immunity, Removal of Cuba From the State Sponsors of Terror List

Turning briefly to the Obama administration's approach to Cuba, one of the more negative developments regarding holding Communist Cuba accountable for crimes against American citizens and others, was Cuba's removal in May 2015, from the State Department's State Sponsors of Terrorism (SST) list.

The statutory guidelines for removal are significant and the public record does not simply warrant Cuba's removal from that list. What was the "fundamental change in the leadership and policies" in Cuba; what evidence was relied upon that Cuba "is not supporting acts of

⁸ To the extent declassification does not harm sources and methods, or other national security equities, complete declassification is in order for documents such as the "Review of the Actions Taken to Deter, Detect, and Investigate the Espionage Activities of Ana Belen Montes (U)," U.S. Department of Defense, Office of the Inspector General, Deputy Inspector General for Intelligence (June 16, 2005) available at <https://nsarchive2.gwu.edu/NSAEBB/NSAEBB534-DIA-Declassified-Sourcebook/documents/DIA-37.pdf> (last accessed June 15, 2018).

international terrorism”; what “assurances” has Cuba provided that it “will not support acts of international terrorism in the future.”⁹

Despite Congressional requests to understand why it was done, it is my understanding that the Congressional policymakers remain in the dark as to all of the reasons the Obama administration removed Cuba from the SST list.

There are many policy reasons why Cuba was placed on that list, items that are outside the scope of my testimony today; however, for American families and other victims of the regime, Cuba’s removal from the SST list will make it harder for them to exact justice.

Leveraging U.S. Law to Advance U.S. Interests and Justice for Americans

As I mentioned at the onset of my remarks, to advance the cause of justice for Americans harmed by Cuban Communism, the United States and other responsible stakeholders need to do more to address the underlying problem. In addition to the indictment, an essential way to do this must include enforcing U.S. laws with respect to Cuba, especially the LIBERTAD Act.

Spurred in part by the disproportional and unnecessary use of force by the Cuban Air Force as it shot out of the sky—destroyed—the two small civilian Brothers to the Rescue planes on humanitarian missions over international waters, the Congress passed, and President Bill Clinton signed, the *Cuban Liberty and Democratic Solidarity Act of 1996* (“LIBERTAD Act” or Helms-Burton).¹⁰ The law has never been fully enforced.

Here is a brief survey of sections of LIBERTAD that have never been implemented, have been ignored, or as was the case during the prior administration, potentially violated:

⁹ Section 6(j)(4)(A)(i)(iii), Export Administration Act of 1979; § 40(f)(1)(A)(i)(iii), Arms Export Control Act; and §620A(c)(1)(A)(C), Foreign Assistance Act of 1961. In each act, the language is identical.

¹⁰ Pub.L. 104-114, 110 Stat. 785, 22 U.S.C. §§ 6021-6091.

1. **Section 3(2)** of the LIBERTAD Act states that the purpose of the law is to “strengthen international sanctions” against Cuba. This has never happened, in fact, the opposite is likely the case.
2. **Section 3(3)** of the LIBERTAD Act states that the purpose of the law is to provide for “the continued national security of the United States in the face of continuing threats” from Cuba from “terrorism, theft of property” from Americans, among other bad acts. This has yet to be fully realized, and in some cases, it is being potentially violated.
3. **Section 3(6)** of the LIBERTAD Act states that the purpose of the law is to protect Americans “against confiscatory takings and wrongful trafficking in property confiscated” by Cuba. This has been poorly implemented and, in some cases, is being potentially violated because, among other administrative actions, of licenses that may have been granted to American companies to engage in certain transactions in Cuba with the Cuban military.
4. **Section 101(2)** of the LIBERTAD Act states that the President should advocate and should instruct the United States Permanent Representative to the United Nations to propose and seek within the United Nations Security Council, a mandatory international embargo against the totalitarian Cuban Government pursuant to Chapter VII of the Charter of the United Nations, employing efforts similar to consultations conducted by United States representatives with respect to Haiti. To my knowledge, this has never happened in the 22 years that the law has been in effect.
5. **Sec 102(a)(1)** of the LIBERTAD Act states the President should encourage foreign countries to *restrict* trade and credit relations with Cuba in a manner consistent with the purposes of that Act. To my knowledge, this has never happened.
6. **Section 102(a)(2)** of the LIBERTAD Act states the President should take immediate steps to apply the sanctions in the Cuban Democracy Act against countries assisting Cuba. To my knowledge, this has never happened.
7. **Section 102(b)** of the LIBERTAD Act states the Secretary of State should ensure that United States diplomatic personnel abroad understand and, in their contacts with foreign officials, are communicating the reasons for the United States economic

embargo of Cuba and are urging foreign governments to cooperate more effectively with the embargo. To my knowledge, this has never happened, but this must happen for a variety of reasons, especially to advance the cause of justice in cases such as these and others like it.

8. **Section 103** of the LIBERTAD Act includes a prohibition against the indirect financing of Cuba, yet the prior administration essentially crammed in the *Cuban Assets Control Regulations (CACR)*¹¹ the Cuban government definition of “private sector,” when in reality, the Cuban-defined “private sector” is but another appendage of the state and not a private sector at all. The only private sector in Cuba is the illegal black market. This particular rule, in contravention of U.S. law, may be encouraging the unlawful trafficking in properties that were confiscated from American citizens and now the subject of a U.S. certified property claim against Cuba.
9. **Section 108 reports.** Over the course of at least 15 years, to my knowledge these important reports about Cuban bilateral relations with other nations have rarely, if ever, been provided to Congressional oversight committees. The President is supposed to report to the Congress annually about bilateral economic relations that Cuba has with other nations as well as Cuban foreign debt servicing. This data can be used for many things including tracking trafficking in properties subject to certified claims, securing cooperation from allies in U.S./Cuba policy matters, freezing Cuban assets for compensation, including victims who have judgments against Cuba, and much more.

A new generation of Cuban leaders allied with adversaries and enemies of the United States are at the ready to continue, what they perceive as a long struggle to construct a so-called socialist “paradise” in Cuba and elsewhere. Americans are already paying a high price for this. The death toll in Caracas, Managua, and elsewhere continues to rise thanks to the assistance provided to the autocratic regimes in these countries by Cuban shock troops masked as “advisors.” An American was killed in Managua this month and Joshua Holt was held hostage in Venezuela as a

¹¹ 31 C.F.R. 515, et. seq. (the Regulations) are administered and enforced by the U.S. Department of the Treasury, Office of Foreign Assets Control (OFAC) under the Trading With the Enemy Act (TWEA) and other laws and executive orders, actions, and directives.

political bargaining chip. In my opinion, Cuba had a hand in both, and in other recent actions against American citizens and interests in the region. They are not going to stop.

President Trump issued National Security Presidential Memorandum 5 (NSPM-5) in 2017, and instructed executive branch agencies to reformulate U.S./Cuba policy based on “national security and foreign policy interests of the United States.” The “initial actions” call for support of existing laws such as enforcement of the LIBERTAD Act, including working to “ensure the return of fugitives from American justice living in Cuba or being harbored by the Cuba government.”

A new round of targeted economic sanctions went into effect November 2017, that restricts transactions by persons subject to U.S. law from engaging with “entities and sub-entities that are under the control of, or act for or on behalf of, the Cuban military, intelligence, or security services or personnel and with which direct financial transactions would disproportionately benefit the Cuban military, intelligence, or security services or personnel at the expense of the Cuban people or private enterprise in Cuba.”

Besides the Cuba Restricted List, targeted sanctions have also been imposed on entities and individuals in Cuba suspected of engaging in many malign activities. While it was important to change the prior administration’s approach toward Communist Cuba, that should not be the overarching goal. Enforcing U.S. law should be the goal.

Executive branch agency officials and presidential advisors must robustly follow through on President Trump’s re-orientation of U.S./Cuba policy. They must redouble efforts ensure that the President’s vision is effectively executed throughout the government – starting with securing justice for American victims of Cuban Communism. Executive branch officials and presidential advisors can address on various challenges in the Americas by focusing on implementing U.S. law with respect to Cuba. Many of the problems in Caracas, Managua, La Paz, Quito, and others Western Hemisphere capitals are rooted in Havana.

In that vein, the Congress and the Trump administration should:

1. **Urge the Justice Department and the Department of State to move swiftly on indicting Raul Castro and other international outlaws who have harmed American citizens.**
Several former U.S. Attorneys, especially in the Southern District of Florida in both Republican and Democratic administrations, have tried to pursue indictments against Raul Castro and other Cuban officials, only to be thwarted by Washington, D.C. politics. This obstruction must end. Do not alert international outlaws on your theory of the case. There are many sections of the U.S. criminal code that could be used to hold these people to account.
2. **Create an Inter Agency Task Force to Track Down International Outlaws in the Americas.** The U.S. Department of Justice, National Security Division (NSD), should be given additional resources to stand up a Task Force that not only works with U.S. Attorneys to indict Raul Castro and his fellow conspirators, but does so going beyond the 1993 attempt to indict Raul Castro and other regime officials for drug trafficking. This Task Force should also focus on bringing down the Hemispheric criminal enterprise that extends well beyond Havana, and reaches places such as Beirut, Bogota, Caracas, La Paz, Managua, Quito, Tehran, among other places.
3. **Declassify all records that can be declassified related to the Brothers to the Rescue Shoot down.** It has been over 20 years. Fidel Castro is dead. The octogenarian Raul Castro is no longer a head-of-state. To build an effective case against Raul Castro, and all others associated with this act of international terrorism, all records that can be declassified must be declassified.
4. **Seek International Cooperation to Hold Cuban Criminals Accountable, Enforce Helms-Burton.** As information is declassified and legal strategies developed, the United States should enforce U.S. laws regarding Cuba, especially the Helms-Burton law, and seek cooperation from responsible stakeholders. Starting with nations in the Western Hemisphere, but expanding this network of support to any nation where Cuba has economic, political or other interests, impress upon U.S. diplomats that allies need to do

a better job of helping the United States hold Cuban diplomats' feet to the fire, especially when it comes to Cubans who have harmed American citizens.

5. **Access to the U.S. market is a privilege, not a right.** Known violators of fundamental rights must not be allowed access to the United States. They must not be granted a U.S. visa nor access to our financial system. Family members of Cuba's Communist Party elites, military, and intelligence services must not be allowed entry to the United States nor allowed to use the American financial system. The Trump administration should work on a rolling out targeted sanctions of rogue regime officials under the Global Magnitsky and others OFAC sanctions programs. This targeted approach will help target gross violators of fundamental rights and provide the future people of Cuba a list of people they may want subject to judicial process in a post-Communist Cuba.
6. **The Congress and the Trump Administration should conduct and publish a bottom-up review of Obama and Bush Administration Cuba policy.** To my knowledge, there has not been a full accounting, or damage assessment, of Cuba foreign policy and intelligence activities targeting the United States or our allies in the Western Hemisphere and elsewhere. Without this information it will be difficult to build a proper case against Communist Cuba in a court of law or the court of public opinion.
7. **As outlined in U.S. law, seriously begin discussion at the United Nations Security Council on the feasibility of using Chapter VII actions Against Cuba.** Using ICTY, ICTR, and other Tribunals as guides, consider a *Special International Criminal Tribunal for Cuba and the Americas* that looks not only at atrocity crimes and other gross violations of human rights by Cuba, but by other rogue states such as Venezuela and Nicaragua. Current and former leaders of certain member states of the anti-American *Bolivarian Alliance for the Peoples of Our America* (Spanish: *Alianza Bolivariana para los Pueblos de Nuestra América*) should also be within the jurisdiction of a *Special International Criminal Tribunal for Cuba and the Americas*.
8. **Take all reasonable steps to ensure the safety of American citizens posted at the U.S. Embassy in Havana; cooperate with defense teams representing victims.** It is my understanding that several American citizens who were harmed when posted at the U.S.

Embassy in Cuba have retained counsel. Every reasonable effort should be taken to help defend these Americans if it is found that Cuban officials were involved in activities that led to the injuries or failed to take steps to protect Americans serving in Cuba. Any future talks with Cuba on a variety of issues should be conditioned on resolving this issue as well as other issues outlined in my remarks.

Thank you. I look forward to answering any questions that you may have.

Mr. DESANTIS. I thank the gentleman.
The chair now recognizes Ambassador Noriega for 5 minutes.

STATEMENT OF AMBASSADOR ROGER NORIEGA

Ambassador NORIEGA. Thank you very much, Mr. Chairman. I have a written statement for the record. I apologize again for my tardiness. No disrespect to the committee and its members.

Thank you for the opportunity to testify before you at this hearing to remind us all of the February 24, 1996 attack by the Castro regime which took the lives of four innocent men who were patrolling international waters to locate and rescue Cuban brothers and sisters at peril in the sea. The Castros never faced justice for this crime despite the late dictator's public admission that the two brothers orchestrated this ambush and the use of lethal force.

In retrospect, Mr. Chairman, we should have recognized this 1996 attack as dispositive proof of the illegitimacy of the terror state in Cuba. Indeed, this hearing is a welcomed opportunity to recall that the regime in Havana has never been confronted for its international crime spree, which began nearly 60 years ago, 6 decades ago, and continues to this very day.

From urging the preemptive nuclear strike against the United States in 1962, to organizing a terror campaign against Central Americans, to sharing anti-American intelligence with our enemies in Baghdad and Belgrade, the Castro regime is an implacable and tireless foe of the United States.

Castro's ongoing criminal conspiracy on our doorstep, which has converted Venezuela into a platform for narcotics trafficking, money laundering, embezzlement, extortion, and political destabilization demands an urgent and effective response. The Castro regime installed Nicolas Maduro as the leader in Venezuela and the perfection of a dictatorship and the destruction of an oil-rich economy is Cuba's handiwork, which was being perpetrated brazenly at the same time that President Obama was heaping concessions on Havana.

Cuban agents run an internal security apparatus in Venezuela that safeguards a narcostate, which consists of dozens of senior officials, including the president himself and the former vice president, who have been convicted or sanctioned by U.S. authorities for their involvement in narcotrafficking and support for terrorism. Indeed, Mr. Chairman, there is fresh evidence of the Castro clan's direct involvement in drug trafficking and terrorism in Venezuela.

Last month, two active duty Venezuelan military officers informed U.S. law enforcement regarding the direct involvement of Cuban military personnel in cocaine smuggling and support for Colombian terror camps deep into Venezuelan territory. Specifically, one of the reports implicates Raul Castro's son-in-law, Cuban General Luis Alberto Rodriguez Lopez-Calleja, in the shipment of cocaine through the Venezuelan port of Lohidao. Another senior Venezuelan officer told U.S. authorities how Cuban officers ordered the local military to steer clear of Colombian narco guerilla camps deep in Venezuelan territory, which are responsible for transiting cocaine to Caribbean ports bound for the United States and other markets.

At long last, we should treat Castro regime officials as the international criminals that they are, starting with the decision not to recognize their hand-picked pawn as the legitimate leader of Cuba. In other words, we should break diplomatic relations with Cuba.

We should gather the evidence to publicly identify Cubans who are involved in narcotrafficking, human rights violations, and crimes and indict them in U.S. courts.

We should convince willing partners in the international community to join us in applying financial sanctions against these criminals, freezing their assets and blocking their access to global financial networks.

In my view, U.S. policymakers should judge future policies toward Cuba on whether they increase the economic and political freedom of the Cuban people. For example, we should reinvigorate our high profile solidarity with the Cuban dissidents, human rights activists, independent journalists and artists who have informed me personally that the U.S. embassy in Havana basically abandoned them after the Obama opening to the Cuban regime.

We should rally likeminded governments in Latin America and Eastern Europe to engage the Cuban people not the dictatorship.

We should restore funding for robust pro-democracy programs in Cuba.

The State Department should return Cuba to the list of terrorist sponsors in light of the fact that the Castro regime sustains Colombian terror groups despite a peace process in that country.

And we should demand accountability, as the ranking member said, for acoustic attacks against two dozen U.S. diplomats in Havana, which did personal physical harm to these individuals representing us overseas.

There should be a top to bottom review of the U.S. Department of the Treasury and Commerce licenses for commercial activities in Cuba to ensure that they are consistent with U.S. policy and public law.

And we should restore restrictions on tourism travel to Cuba and focus instead on genuine, meaningful people-to-people contact that will advance real contact between the people of the United States and Cuba.

And finally, as Jason Poblete has said, we should enforce title IV and title III of the Libertad Act and send a warning to even American businesses that those that are trafficking in confiscated property face accountability if the President decides at any time, which he could, to stop waiving that right of action.

Those are a few ideas, Mr. Chairman. Thank you very much for your attention, and I welcome the opportunity to answer any questions.

[Prepared statement of Ambassador Noriega follows:]



Statement before the House Committee on Oversight and Government Reform
Subcommittee on National Security
On Holding Cuban Leaders Accountable

Time to Confront Cuba's International Crime Spree

Ambassador Roger F. Noriega
Visiting Fellow
American Enterprise Institute

June 20, 2018

Chairman DeSantis, Ranking Member Lynch, and Members of the Subcommittee:

Thank you very much for convening this hearing to remind us all of the February 24, 1996, attack by the Castro regime on two unarmed U.S. civilian aircraft, which took the lives of four innocent people—Armando Alejandro, Jr., Carlos Costa, Mario de la Pena, and Pablo Morales—who were patrolling international waters to locate and rescue their Cuban brothers and sisters in peril on the sea.ⁱ

Although 14 individuals were indicted for their role in this barbaric attack and one Cuban spy was convicted of murder, Fidel and Raul Castro were not indictedⁱⁱ—despite the late dictator’s public admission that the two brothers orchestrated this ambush and use of lethal force.ⁱⁱⁱ In short, Mr. Chairman, the Castros and their coconspirators have never faced justice for this public execution of four innocent and courageous men.

Indeed, this hearing is a timely opportunity to recognize that the regime in Havana has never been confronted for its international crime spree—which began six decades ago and *continues to this very day*. Until the United States and the international community recognize and confront this criminal enterprise, the gangsters in Havana will continue to act with impunity.

From urging a preemptive nuclear strike against the United States in 1962,^{iv} to organizing a terror campaign against Central American nations,^v to sharing anti-American intelligence with our enemies from Baghdad to Belgrade,^{vi}—the Castro regime (which remains the true source of power in Cuba despite a recent presidential transition to a hand-picked successor, Miguel Díaz-Canel) is an implacable and tireless foe of the United States.

Its ongoing criminal conspiracy on our doorstep—which has converted Venezuela into a platform for narcotics trafficking, money laundering, embezzlement, extortion, and political destabilization—demands an urgent and effective response from the U.S. national security establishment.^{vii} As the Trump administration and the bipartisan leadership in Congress confront the regime of Nicolás Maduro in Caracas, we must, at long last, deal with his handlers in Havana who are micromanaging Venezuela’s destabilizing behavior.

In retrospect, Mr. Chairman, perhaps the international community should have recognized the 1996 attack was more than an act of aggression by a hostile government. It was an act of terror perpetrated by gangsters who have tormented well over 11 million Cubans since 1959.

An Act of Terror

Mr. Chairman, one of the most straightforward yet compelling accounts of the events in question was prepared by the Inter-American Commission on Human Rights, the international body which shares its headquarters with the Organization of American States in Washington, D.C.^{viii} The following excerpt contains several key facts, including that the Brothers to the Rescue pilots notified Havana air traffic controllers of their flight plan before departing Miami, the Cuban regime launched its attack while the two Cessnas were

over international waters, and the MiG pilots violated international norms by not warning the Cessna pilots, trying accepted interception methods, or giving them an opportunity to land:

THE INCIDENT. Alejandro, Costa, De la Peña, and Morales were members of the "Brothers to the Rescue" organization, based in the city of Miami, Florida, United States of America. On the morning of 24 February 1996, two of the Brothers to the Rescue Cessna 337 airplanes departed Opa Locka airport in south Florida. Costa was flying one airplane, and he was accompanied by Pablo Morales, a Cuban citizen who had fled the country on a raft. De la Peña was at the controls of the second plane, with Alejandro as his passenger. Before departing, *the two aircraft notified air traffic controllers in both Miami and Havana* of their flight plans, which were to take them south of the 24th parallel.

6. *Parallel 24 is located a good distance to the north of Cuba's 12-mile territorial waters* and it serves as the northernmost limit of the Havana Flight Information Region. Commercial and civilian aircraft routinely fly in this area, and aviation practice requires that they notify Havana air traffic control when they move south of parallel 24. Both Brothers to the Rescue airplanes complied with this custom by communicating with Havana, identifying themselves, and giving their position and altitude.

7. *While the two aircraft were still north of the 24th parallel*, the Cuban Air Force ordered the scrambling of two military aircraft, a MiG-29 and a MiG-23, operating under the control of a military station on Cuban soil. The MiGs were carrying artillery, short-range missiles, bombs, and rockets, and they were flown by members of the FAC. Extracts from the radio communications between the MiG-29 and the military control tower in Havana detail what transpired next:

8. The MiG-29's air-to-air missiles disintegrated the Brothers to the Rescue airplanes, killing their occupants instantaneously and leaving almost no recoverable remains. Only a broad slick of oil marked the place where the planes were downed. At no time did the FAC notify or warn the civilian airplanes, try to use other interception methods, or give them an opportunity to land. *The MiGs' first and only response was the intentional destruction of the civilian airplanes and their four occupants. These actions were a clear violation of established international rules*, which require all measures to be exhausted before resorting to aggression against any airplanes and utterly forbid the use of force against civilian craft. In addition, agents of the Cuban State violated several basic human rights set forth in the American Declaration of the Rights and Duties of Man. [Emphasis added]

Mr. Chairman, the fact that these gangsters deployed aircraft with the markings of an organized military that is affiliated with the Cuban regime and that the orders were given by Cuba's command structure have been used to characterize this attack as an act of state, which must be dealt with in accordance with international norms that govern relations among nation-states.

However, the facts show that this was not an episode where a country's national defense services overreacted, used disproportionate force, or made an egregious error. This was instead a premeditated *terror attack*, conceived by the Castro brothers, hatched

by agents of the Cuban intelligence services operating illegally on U.S. soil, and perpetrated by the regime's security forces following the personal orders of Raul Castro.^{ix}

Dr. William LeoGrande co-authored a 2014 article that offers the most convincing set of facts that this attack was ordered by Fidel Castro personally, because he felt "humiliated" by alleged intrusions into Cuban territory. There is no suggestion in Dr. LeoGrande's account that Castro thought that these small aircraft represented any threat to Cuba—merely that they hurt the dictator's feelings. Furthermore, Dr. LeoGrande's article exposes Castro's malice aforethought—his intent to murder in cold blood. He recounts how Cuban officials asked several Americans on separate occasions how the United States would react if Cuba were to *shoot down* these aircraft—*not to intercept* them, *not to warn* them, and *not to escort* them out of Cuban airspace, *but to shoot them down*.^x

What is truly condemnable is that no one—from Fidel, to Raul, to any of their military subordinates—resorted to the option of abiding by the international rules adhered to by bona fide militaries in intercepting intruding civilian aircraft. Of course, the Castro gang has never played by the rules.

Over a period of many months, these Cuban conspirators selected, stalked, ambushed, and destroyed small unarmed civilian aviation aircraft that they knew to be harmless. Their aim was to terrorize anyone who challenges their regime. Since that day, it is fair to ask why the United States and every decent government on Earth continued to treat the regime in Havana as a legitimate nation-state.

The Lawless, Illegitimate Gang in Havana

The gang of rebels that set up operations in Havana in 1959 have hijacked the concepts of the nation-state, international law, and the "rules of war." When it is convenient, they cite their revolutionary project as a pretext for violating these norms. And when they are caught, they wrap themselves in the cloak of statehood to shield themselves from accountability and justice.

During the nearly 60 years since seizing power by force in Cuba, the Castro revolutionaries have failed to take any credible steps—such as a genuine, competitive election, referendum, or plebiscite—to earn the right to govern Cuba or to be treated as a legitimate sovereign state. On the contrary, they have executed, exiled, or coerced political opponents at home and behaved like bandits abroad. Why don't we treat them accordingly?

Relentlessly and implacably hostile to the United States, our citizens, and our interests, for nearly 60 years this regime has oppressed its own people, attacked U.S. interests, and promoted terrorist groups to destabilize U.S. allies.

"Going all the way back to the consolidation of Castro's authoritarian regime in Cuba in the early 1960s, Fidel's dream was to export his dictatorial model to the rest of Latin America (and beyond as in the Congo and Angola) with his *foco* theory of attempting to

generate insurgencies in Bolivia and elsewhere,” Dr. Craig E. Deare of the National Defense University explains in a recent article. “Virtually every country in the region with a left-of-center and authoritarian style of government was aided and abetted by Cuba’s military and intelligence services: El Salvador, Nicaragua, Bolivia and now Venezuela.”^{xi}

Cuba’s ‘Occupation Army’ in Venezuela: They Broke It; They Own It

Dr. Deare explains the Cuban role in Venezuela: “Maduro has been under the influence—if not outright control—of Cuban political advisors, intelligence services, and military since Chavez’s departure from the scene.... As the descent into chaos has accelerated, *Cuba now has ‘an occupation army’ in Venezuela*, according to Luis Almagro, the secretary general of the Organization of American States. De-facto ownership of Venezuela’s oil riches would be a lifeline to Cuba’s dismal economic model.” [Emphasis Added]

Mr. Chairman, since Hugo Chávez was elected president of Venezuela in 1998, Fidel Castro and his regime claimed a unique role in advising his protégé dictator. The regime gradually assumed an expanding role in virtually every Venezuelan ministerial function, the most important of which was maintaining an airtight internal security network that monitored Chávez’s own inner circle and military for ideological loyalty.

When Chávez was diagnosed with cancer, Cuban physicians managed his medical care. As it became clear that Chávez would not recover, the Castro brothers maneuvered to ensure that Nicolás Maduro—known for slavish devotion to the Cuban revolution—would be designated by Chávez as his successor. Rather than counsel the ailing president to preserve his health, Cuban physicians encouraged him to use his remaining weeks on the campaign trail, seeking reelection.^{xii} A video taken days before his last election shows Chávez collapsing at a rally that marked the end of his campaign—literally collapsing at the finish line.

But the Cubans needed an even bigger sacrifice. In a macabre episode, the Castro brothers actually sequestered Chávez from his family and concealed his death, *which occurred in Cuba around December 30, 2012*, so that Maduro could be sworn in as vice president and stake his claim to the presidency.^{xiii} A little-known but momentous fact, confirmed by Venezuelan defector Leamsy Salazar and other unimpeachable sources, is that *by the time Hugo Chávez was sworn into his fourth term in office on January 10, 2013, he had already died in Cuba*. And, “interim vice president” Maduro was sworn in on March 8, 2013, three days after Chávez’s death was made public. Maduro won the presidency in a disputed election—despite the constitutional rules prohibiting him from standing for election while serving as vice president.^{xiv}

To summarize, this transition of power to a Castro acolyte was micromanaged by Cuba. And what has become of Venezuela under Maduro—the perfection of a dictatorship and the destruction of an oil-rich economy—is Cuba’s handiwork. They broke it; they own it. So, today, Venezuela is a platform for Cuba’s continuing crime spree.

According to a colleague of mine who monitors activities in Venezuela, an active-duty Venezuelan military officer informed U.S. law enforcement in May of this year that Cuban military personnel—*coordinated directly by Cuban army Gen. Luis Alberto Rodriguez Lopez Callejas, Raul Castro's son-in-law*—are directly involved in smuggling cocaine through the port of La Guaira, with most of the drug shipments bound for Europe and west Africa. Another Venezuelan officer described the presence of Colombian narcoguerrilla camps deep into Venezuelan territory, which are responsible for transiting cocaine bound for the United States and other markets to Caribbean ports. The Venezuelan source explained to a U.S. law enforcement official that Cuban military officers stationed in Venezuela have instructed the national security forces not to approach these guerrilla camps or to interfere with their narcotics smuggling operations.

In a recent essay, Christopher Dickey describes the process by which the Cuban regime made itself indispensable to Chávez and to his successor Maduro. Initially employing its expert counterintelligence expertise to ferret out challenges to the regime, Cuba's role expanded to every aspect of Venezuela's internal security apparatus.^{xv} "Cuban counterintelligence is said to have tutored the Venezuelan spies, domestic and foreign, and helped to organize them to root out opposition to the regime of Hugo Chávez," Dickey explains. "Indeed, the Cubans taught them to do whatever might be necessary to survive."

Dickey describes the evolution of the Cartel of the Sun, named for the sunburst insignia on the uniform of Venezuelan general officers. He also cites the role the Cubans played in brokering an alliance between the Chávez government and Colombian guerrilla organizations—the FARC (*Fuerzas Armadas Revolucionarias de Colombia*) and the ELN (*Ejercito de Liberacion Nacional*)—which have become principal cocaine smugglers and have generated fortunes to sustain their political project even as they pretend to end their armed struggle.

Cuban agents who have taken an unparalleled role in Venezuela's internal security apparatus are naturally involved in the drug smuggling activities of the Maduro family and regime henchmen, Vice President Tareck El-Aissami and Diosdado Cabello—both of whom have been sanctioned by the U.S. Treasury for their involvement in narcotics trafficking.

Time to Treat Cuba as a Criminal Regime

Mr. Chairman, the U.S. government never accorded legal recognition of the Taliban in Afghanistan or ISIS in Syria. Castro agents continue their criminal behavior, including narcotrafficking; engage in systematic abuse of international norms, such as political destabilization of democratic governments; and lack political legitimacy to govern Cuba. So why do we continue to recognize them as a nation-state?

In my opinion, we should treat Castro regime officials as the international criminals they are. We should break diplomatic relations with the regime in Havana. We should gather the evidence to identify Cubans who are involved in narcotrafficking, human rights violations, and other crimes and indict them in U.S. courts for violations of U.S. law. We should enlist the support of the international community to join us in applying financial

sanctions against these individual criminals—blocking their access to the global financial network.

The United States Congress and President Bill Clinton reacted to the 1996 attack by passing legislation—which I helped draft, working for then-Congressman Ben Gilman—that denied the regime the proceeds of its “firesale” of confiscated property, offered renewed economic and political ties to incentivize a democratic transition, and codified most of the embargo pending real political reform in Cuba.

Three-fourth majorities in both houses of Congress approved the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996, which codified the economic embargo on Cuba. However, it also authorizes the president to suspend economic sanctions provided that a post-Castro government begins to respect the economic and political rights of the Cuban people. For example, the law expects that a transitional government in Cuba would free all political prisoners, respect political freedoms, dismantle the police state, and commit to holding fair elections within 18 months. In addition, it expects a new government to at least make public commitments to establishing independent courts and honoring internationally-recognized human and labor rights.

The ugly reality is that Cuba remains the only country in the Western Hemisphere that cannot meet any of these foregoing conditions.

Every U.S. President since Lyndon Johnson has made changes to U.S. policy toward Cuba. But none of them, until President Barack Obama, made sweeping unilateral concessions to the Castro regime without asking or receiving anything in return. Predictably, the regime made no meaningful political or economic reforms. On the contrary, the brutal crackdown on human rights activists and independent journalists continued, while, according to dissidents, the new U.S. Embassy and other diplomats abandoned these pro-democratic conditions.

President Trump has taken steps to reverse the unilateral concessions to Cuba made by the Obama administration. In announcing this partial rollback in June 2017, the president said, “The previous administration’s easing of restrictions on travel and trade does not help the Cuban people—they only enrich the Cuban regime.... The outcome of the last administration’s executive action has been only more repression and a move to crush the peaceful, democratic movement....” In November 2017, the Trump administration unveiled new regulations that began rolling back Obama-era regulations that made it easier to do business with entities associated with the regime and to travel to the island.

In my view, U.S. policymakers should base future policy initiatives—either reversing or adjusting the Obama measures or launching creative new programs—on whether they increase the economic and political freedom of the Cuban people to take control of their own future. The following are ideas for reshaping a more purposeful U.S. policy towards Cuba.

Political and Security Initiatives

- Target abusive Cuban officials with Magnitsky-like sanctions up-and-down the chain of command. In its first year, the Trump administration sanctioned more than two dozen Venezuelan officials for narco-trafficking, assaults against democracy, and human rights abuses. They should extend those sanctions to Cuban officials and those operating in Venezuela as well. While none may have assets in the U.S. to be frozen, or visas to be withdrawn, some may be impacted for their dealings with other entities that come into contact with the U.S. financial system. Secondly, the stigma of a U.S. sanction is a powerful psychological tool, especially when the culprit is named-and-shamed before the international community. Lower-echelon officials should know anonymity no longer offers them protection.
- Re-establish high-profile solidarity with Cuban dissidents, opponents, and human rights activists; rally like-minded governments, such as former communist countries in Europe, to support dissidents and the Cuban people more generally. Robustly fund the Cuba Democracy Program to previous levels.
- Reassess the Obama administration's controversial decision to upgrade the Castro regime's ranking in the State Department's annual Trafficking in Persons (TIP) report. Contemporaneous media reports indicated Obama officials exerted undue pressure on career professionals to improve the rankings of several countries.
- Return Cuba to the list of State Sponsors of Terrorism. The Castro regime's recent attempt to help North Korea smuggle weapons through the Panama Canal and its support for violent repression in Venezuela demonstrate that it has undergone no change of heart regarding its destructive, anti-American foreign alliances.
- Break diplomatic relations with the Cuban government headed by Castro's hand-picked successor Miguel Díaz-Canel, and encourage international support for pro-democracy activists.
- Cancel Obama's U.S.-Cuba "Working Groups," especially the so-called "Law Enforcement Dialogue", which involves intelligence-sharing on counterterrorism, counternarcotics, and other criminal activity.
- Establish a public diplomacy capability specifically focused on identifying and countering the main lines of disinformation and propaganda disseminated by the Cuban government.
- Refuse to return a full complement of U.S. diplomats to Havana until the Castro regime offers a full explanation of what it knows about what occurred to the two-dozen injured diplomats and embassy staff and it makes reparations to those employees if it is established that it was Cuban government involvement, complicity, or neglect that caused the injuries.

- Expand U.S. narcotics investigations in Venezuela to Cuban officials based there. Venezuela is a full-blown narco-state, with numerous high-ranking officials implicated in facilitating drug shipments from Colombia through Venezuela and on to the United States and Europe.

Economic Initiatives

- Order a top-to-bottom review of Department of Treasury and Commerce licensing procedures for commerce with Cuba to ensure they are consistent with objectives of U.S. policy towards Cuba as laid out in the 1996 Cuban Liberty and Democratic Solidarity (LIBERTAD) Act.
- Direct OFAC to order money-wiring services to have their clients sending money to Cuba to certify it's not going directly or indirectly to any of the categories of banned individuals. Task the Treasury Department to investigate banking arrangements to ensure the Castro regime is not using loopholes to gain access to the U.S. financial system.
- Further restrict the tourism abuses of Obama's policies by ending licenses for cruise ship travel to Cuba which violate the spirit of the rules by organizing passengers into "affinity groups" after they are already on board, and thus by no measure meet the expected standards of true "people-to-people" contact.
- Fulfill President Trump's mandate to enforce existing U.S. laws by applying Title IV of the LIBERTAD Act, which denies U.S. visas to foreign persons profiting from confiscated property in Cuba claimed by U.S. nationals. Reintroducing this threat will have a chilling effect on the Castro regime's effort to lure foreign investment in its tourism industry, the Cuban military's cash cow.
- Issue a public statement discouraging U.S. businesses from trafficking in stolen U.S. properties. Warn US companies operating in Cuba by issuing a Statement of Policy pointing out that American businesses are not immune from lawsuits under Title III of the LIBERTAD law.

Thank you very much, Mr. Chairman.

¹ "According to the four-member ICAO [International Civil Aviation Organization] team, three Cessnas operated by 'Brothers to the Rescue' deviated from their flight plans on the date in question and flew within danger areas (sic) designated by Cuba. Two of them were shot down, while approximately 10 nautical miles outside Cuban territorial airspace; the third returned safely to the United States. Cuba did not attempt to use other means available to it, such as radio communication, contrary to the principle that interception of civil aircraft should be a last resort." United Nations News Release, "Security Council Condemns Use Of Weapons Against Civil Aircraft; Calls On Cuba To Comply With International Law," United Nations News Release, July 26, 1996, <https://www.un.org/press/en/1996/19960727.sc6247.html>.

ⁱⁱ On May 7, 1999, a U.S. Federal indictment was emitted by the Southern District of Florida charging 14 individuals, including Cuban spies, with a conspiracy called, "Operation Scorpion," that resulted in the February 24, 1996, attack.

ⁱⁱⁱ "Cuban President Fidel Castro said he gave orders to his military to shoot down planes violating his country's airspace, *weeks before* Cuban fighters downed two civilian airplanes.... [Emphasis added]" "Castro takes responsibility for downing civilian planes," CNN, March 2, 1996, www.cnn.com/US/9603/cuba_shootdown/02_castro/.

^{iv} "Khrushchev Memoir Tells of Castro Plea For Attack on U.S.," by ROBERT PEAR, New York Times Archives, <https://www.nytimes.com/1990/09/24/world/khrushchev-memoir-tells-of-castro-plea-for-attack-on-us.html>.

^v *Castro's Americas Department*, by Rex A. Hudson, The Cuban American National Foundation, 1988, www.latinamericanstudies.org/rex-hudson.htm.

^{vi} "Cuba Spies Sell to U.S. Foes," The Washington Times, October 26, 2007 <https://www.washingtontimes.com/news/2007/oct/26/cuba-spies-sell-to-us-foes/>.

^{vii} "Nicolas Maduro Doesn't Really Control Venezuela," by Moises Naim, *The Atlantic*, May 25, 2017, <https://www.theatlantic.com/international/archive/2017/05/maduro-venezuela/528003/>.

^{viii} "Report N^o 86/99, Case 11.589, Armando Alejandro Jr., Carlos Costa, Mario de la Peña, and Pablo Morales, Cuba," Inter-American Commission on Human Rights, Organization of American States, September 29, 1999, https://www.cidh.oas.org/annualrep/99eng/Merits/Cuba11.589.htm#_ftn1.

^{ix} "We know that various U.S. Agencies knew the flight was compromised because one Pablo Roque, a Cuban agent who had worked for the FBI, had returned to Cuba on the day before and had provided detailed information to the regime concerning the February 24 Brothers to the Rescue mission." Statements of Representative Ileana Ros-Lehtinen and of Representative Lincoln Diaz-Balart, Hearing of the Subcommittee on Crime, Committee on the Judiciary, U.S. House of Representatives, July 15, 1999.

^x "What would be the reaction of your military if we shot down one of those planes?" [Cuban Air Force Brigadier General Arnaldo Tamayo Méndez] asked a delegation of retired U.S. military officers during a visit to Cuba. Quoting from, "The Real Reason It's Nearly Impossible to End the Cuba Embargo," by Peter Kornbluh and William M. LeoGrande, *The Atlantic*, October 5, 2014, <https://www.theatlantic.com/international/archive/2014/10/the-1996-incident-that-made-it-nearly-impossible-to-repeal-the-cuba-embargo/381107/>.

^{xi} "The Solution to Venezuela Runs Through Cuba," by Craig A. Deare, *Americas Quarterly*, May 30, 2018, www.americasquarterly.org/content/solution-venezuela-runs-through-cuba.

^{xii} "Cuban Medicine Killed Hugo Chavez," by Joel Hirst, Fox News, March 6, 2013, www.foxnews.com/opinion/2013/02/28/cuban-medicine-killed-hugo-chavez.html

^{xiii} "Hugo Chavez 'died two months before his death was announced,'" The Telegraph, February 2, 2015, <https://www.telegraph.co.uk/news/worldnews/southamerica/venezuela/11385437/Hugo-Chavez-died-two-months-before-his-death-was-announced.html>.

^{xiv} "Venezuela's vice president sworn in as interim president," by Tom Watkins, CNN, March 8, 2013, <https://www.cnn.com/2013/03/08/world/americas/venezuela-maduro-capriles/index.html>.

^{xv} "How Cuba Helped Make Venezuela a Mafia State," by Christopher Dickey, *The Daily Beast*, June 2, 2018, <https://www.thedailybeast.com/how-cuba-helped-make-venezuela-a-mafia-state?source=email&via=mobile>.

Mr. DESANTIS. Thank you.
Doctor, you are up, 5 minutes.

STATEMENT OF WILLIAM LEOGRANDE

Mr. LEOGRANDE. Thank you, Mr. Chairman, Mr. Ranking Member, other members of the committee. Thank you for inviting me to testify today.

In deciding to engage with North Korea, President Trump recognized that sanctions alone had failed to halt North Korea's nuclear program. So he took a different approach. Time will tell if it works. I hope that it will.

But the basic idea behind his approach is no different than the idea behind President Obama's opening to Cuba. After decades of using the stick of sanctions against an adversarial regime without much success, it made sense to try to advance U.S. interests through a policy of engagement.

Whether your principal concern is human rights or compensation for nationalized U.S. property or the return of U.S. fugitives or Cuba's support for the failing regime in Venezuela, there is no chance of making progress on these issues with a policy of hostility that relies exclusively on sanctions, especially when no other country in the world observes those sanctions. Moreover, our current economic sanctions harm the living standards of ordinary Cubans, and that is why the last three Popes, including John Paul II, who was no friend of communism, opposed the embargo.

The idea of engaging with Cuba is not a new one. Every President since Dwight D. Eisenhower, including both Richard Nixon and Ronald Reagan, engaged in negotiations with Cuba because they realized there were some problems that could only be solved with Cuban cooperation. And that is even more true today when so many of the issues we face in the western hemisphere are transnational, issues like migration, environmental protection, human trafficking, and organized crime.

Engagement with an adversary in order to advance U.S. interests does not constitute a moral endorsement of that adversary's behavior. President Trump's meeting with Kim Jong-un was not an endorsement of North Korea's human rights record, nor was President Obama's opening to Cuba an endorsement of that regime's human rights record.

Our current National Defense Strategy, approved by the President in December, identifies China and Russia as our principal adversaries in the world today. Both are authoritarian regimes with terrible human rights records. Yet, we engage with them every day on a variety of issues because doing so serves our national interest. There is no reason not to do the same with Cuba. Moreover, as we back away from engagement with Cuba, Russia and China are rushing to fill the vacuum.

With regard to seeking criminal indictments against Cuban officials for human rights abuses, even if there were legal grounds for securing these indictments, the accused could not be brought to trial because Cuban law prohibits the extradition of Cuban nationals. In 1982, four Cuban officials were indicted in Florida for narcotics trafficking, and the only effect of those indictments was to delay the establishment of counternarcotics cooperation between

the United States and Cuba until the 1990s. In 2003, as has been mentioned, the two Cuban pilots responsible for shooting down the Brothers to the Rescue plane were indicted in Florida, along with their commanding general, but that case has not progressed either.

Pursuing human rights indictments today might be symbolically satisfying, but it would poison the atmosphere of bilateral relations and impede existing law enforcement cooperation. That would endanger our ability to secure the extradition of U.S. nationals who have committed crimes here and then fled to Cuba and our ability to pursue the prosecution in Cuba of Cuban nationals for crimes committed in the United States. These are areas in which there has been significant and ongoing progress since 2014.

In short, I believe that more has been gained and more can be gained through a policy of engagement and cooperation on issues of mutual interest than through a policy of unmitigated hostility and heightened sanctions, real or symbolic.

I agree with former Secretary of Commerce Carlos Gutierrez when he argues that engagement is the best way to help a new generation of Cubans modernize their economy and their political system.

Cuba today is going through a process of change, both in its leadership and in its economy. The old generation that founded the regime is leaving the political stage. Most are already gone. At the same time, Cuba is trying to move from a Soviet style economic planning system to some version of market socialism like China and Vietnam. Economic reform is providing Cubans greater economic freedom, and if it succeeds, it could raise their standard of living significantly. U.S. policy ought to facilitate that change not impede it.

Ultimately the people of Cuba will determine their nation's future and decide on issues of accountability. If the United States wants to have a positive influence on these developing changes, it has to engage, not sit on the sidelines.

Thank you, Mr. Chairman.

[Prepared statement of Mr. LeoGrande follows.]

Testimony of Dr. William M. LeoGrande
Professor of Government and Dean Emeritus
School of Public Affairs, American University
Washington, DC 20016

Before the Subcommittee on National Security
Committee on Oversight and Government Reform
United States House of Representatives

For the Hearing: "Holding Cuba's Leaders Accountable"
June 20, 2018

Mr. Chairman, Members of the Subcommittee:

Thank you for inviting me to testify today. I am Professor of Government and Dean Emeritus in the School of Public Affairs at American University and have studied Cuba and U.S.-Cuban relations for most of my academic career. Most recently, I coauthored the book *Back Channel to Cuba: The Hidden History of Negotiations between Washington and Havana*, which the American Academy of Diplomacy named the best book on American diplomacy in 2015.

In deciding to engage with North Korea, President Trump recognized that over the years, sanctions alone had failed to halt North Korea's nuclear program, so he took a different approach. Time will tell whether it works; I hope it will.

The basic idea behind his approach is no different than the idea behind President Obama's opening to Cuba. After decades of using the stick of sanctions against an adversarial regime without success, it made sense to try to advance U.S. interests through engagement.

Whether your principal concern is human rights, or compensation for nationalized U.S. property, or the return of U.S. fugitives, or Cuba's support for the failing regime in Venezuela, there is no chance of making progress on any of those issues with a policy of hostility that relies exclusively on sanctions—especially when no other country in the world observes those sanctions. The historical record is clear that sanctions only work when they are multilateral.

Moreover, our current economic sanctions targeting the whole Cuban economy, rather than specific individuals, harms the living standards of ordinary Cubans. That is why the last three Popes, including John Paul II, who was no friend of communism, opposed the embargo.

The idea of engaging with Cuba is not new. Every president since Dwight D. Eisenhower—including both Richard Nixon and Ronald Reagan—entered into negotiations with Cuba because they realized there were some problems they could only solve with Cuban cooperation. That is even more true today when so many of the issues we face in the Western Hemisphere are transnational—issues like migration, environmental protection, human trafficking, and organized crime.

Engagement with an adversary in order to advance U.S. interests does not constitute a moral endorsement of that adversary's behavior. President Trump's meeting with Kim Jong Un was not an endorsement of North Korea's human rights record, nor was President Obama's opening to Cuba an endorsement of that regime's human rights record.

Our current *National Defense Strategy*, approved by the president in December, identifies China and Russia as our principal adversaries in the world today. Both are authoritarian regimes with terrible human rights records, yet we engage with them every day on a variety of issues because doing so serves our national interest. There is no reason not to do the same with Cuba. Moreover, as we back away from engagement with Cuba, China and Russia are rushing in to fill the vacuum.

With regard seeking criminal indictments against Cuban officials for human rights abuses, even if there were legal grounds for securing such indictments, the accused could not be brought to trial because Cuban law prohibits the extradition of Cuban nationals. In 1982, four Cuban officials were indicted in Florida for narcotics trafficking, and the only effect of those indictments was to delay the establishment of counter-narcotic cooperation between the United States and Cuba until the late 1990s. In 2003, the two Cuban pilots responsible for shooting down the Brothers to the Rescue planes were indicted in Florida, along with their commanding general, on a variety of charges, including murder. That case had not progressed either.

Pursuing human rights indictments today might be symbolically satisfying to some, but it would only serve to poison the atmosphere of bilateral relations and impede existing law enforcement cooperation, which has been improving. That would endanger our ability to secure the extradition of U.S. nationals who commit crimes here and then flee to Cuba, and our ability to pursue the prosecution in Cuba of Cuban nationals for crimes committed in the United States. These are areas in which there has been significant progress since 2014, progress that has continued despite the Trump administration's decision to back away from the normalization of relations.

In short, I believe more has been gained, and more can be gained, through a policy of engagement and cooperation on issues of mutual interest than through a policy of hostility and heightened sanctions, real or symbolic.

I agree with Congressman Tom Emmer that American farmers ought to be able to finance agricultural sales to Cuba, especially at a time when other countries are imposing tariffs on our farm products.

I agree with Congressman Mark Sanford that restrictions on travel to Cuba should be lifted because Americans have a constitutional right to travel.

I agree with the U.S. Chamber of Commerce that American business ought to be able to trade and invest in Cuba because it will strengthen our economy and create jobs.

And I agree with former Secretary of Commerce Carlos Gutierrez when he argues that engagement is the best way to help a new generation of Cubans modernize their economy and their political system.

Cuba today is going through a process of change, both in its leadership and in its economy. The old generation that founded the regime is leaving the political stage—most are already gone. At the same time, Cuba is trying to move from the old Soviet-style economic system to some version of market socialism like Vietnam and China. Economic reform is providing Cubans greater economic freedom and, if it succeeds, it could raise their standard of living significantly. U.S. policy ought to facilitate that change, not impede it.

Ultimately the people of Cuba will determine their nation's future and decide issues of accountability. If the United States wants to have a positive influence on these developing changes, it has to be engaged, not sitting on the sidelines.

Mr. DESANTIS. Thank you.

The chair now recognizes himself for 5 minutes.

Ms. de la Peña, can you tell me a little bit about Mario and why was he involved with Brothers to the Rescue?

Ms. DE LA PEÑA. Yes, Mr. Chairman. My son Mario wanted to be a pilot all his life. It was something that he just loved. And he started flying and learning about airplanes at a very early age. And when he had all his licenses to fly, Brothers to the Rescue was already rescuing—and it was in the news—rescuing lots of Cuban rafters who would otherwise perish at sea. And it was a very wonderful thing to do. I admired him for wanting to do that, volunteer his time. And so he volunteered and he was accepted to fly with them.

He was going to school and he had a part-time job, and in between, he would fly whenever he got called for a mission. And he would leave the house at 7:00 in the morning, fly, and come back, and tell me the stories of what happened. And the first time he flew—no, not the first time he flew because he first flew as an observer and then later as a pilot. But the first time that he saw a young couple at sea, it was a little spot. And they communicated via a two-way radio. The couple was younger than he was, and he was only like 22. And he came back and he said, Mom, they were younger than I am and they were at sea with sharks and the whole works. And he was just very excited about doing it. That is why he joined Brothers to the Rescue because it was a very fulfilling experience for him.

Mr. DESANTIS. Ms. Ciereszko, what about Armando? What was he like and why did he do it?

Ms. CIERESZKO. Well, Armando came to the United States as a 10-year-old. We came in 1960 to escape Castro's communism. And he always felt a love for Cuba, but he also felt a love for the United States. And Armando was the kind of person who always wanted to help others. He truly believed that his service in Vietnam was going to help stop communism, the spread of communism. He had not been able to stop it in Cuba. He was just a little kid when he left. But he believed that he could make an impact there.

Afterwards, he stayed very active on many issues both on Cuban issues but also on issues in the United States. During the Gulf War, he provided a lot of support to the families of the men and women who went to fight in the Gulf War. There were groups in Miami that were supporting them, and he did a lot there. And so he was always active with that.

He actually was not a member of Brothers to the Rescue. He was just someone who cared about what was going on. And he had flown only once before to the Bahamas where there was a camp where many rafters had been taken to because they had not been able to reach U.S. shores. They had reached the Bahamas. And they had taken diapers and milk and food. And they were supposed to go back to the Bahamas that day, and he was very excited about that.

But I think it was planned by the Cuban Government to make sure that instead they were on the Florida straits looking for rafters because they were not allowed to land in the Bahamas be-

cause the Cuban Government had a visit to the camp that day, and they did not want both groups there at the same time.

Mr. DESANTIS. Now, what you and then other families—the experience about how the U.S. Government reacted to this and have you been disappointed? How would you express your feelings about the aftermath? Here we are many years later.

Ms. CIERESZKO. We felt that the Clinton administration had a very weak response because we thought they are killing Americans on international waters. And the only thing that came out of that was the Helms-Burton Cuban Libertad Act. And it did not feel like it was enough.

Before that, we always believed that the United States would stand for its citizens anywhere in the world. I cherish my United States passport. I travel a lot. But I do not feel as comfortable today as I did many, many years ago when I really believed that the United States would come to bat for any American citizen wherever they got into trouble.

Mr. DESANTIS. Ms. de la Peña?

Ms. DE LA PEÑA. I feel equally as disappointed in the response because my son would say I do not break the law. I am saving lives, and I will be fine, Mom.

I was worried about the weather and the clouds and the thundering when he was flying in these little planes. I was not worried about a Castro warplane coming out of their territory into international airspace and killing and shooting down the two planes without any notice to the pilots.

But it was very weak—the response.

And also, 2 years ago, President Clinton met with Raul Castro here at the United Nations and shook hands with him, and how happy he was to finally meet him. That was very hurtful for us as well. The guy that gave the order to kill American citizens and you are very happy to hold his hand? It is one disappointment after another.

Mr. DESANTIS. My time has expired. I will recognize the ranking member for his questions.

Mr. LYNCH. Thank you, Mr. Chairman.

First of all, again, let me just express my sorrow at your loss. And let me express my thanks to your sons and to the other pilots for their service to individual freedom and democracy and, in the case of your son, Ms. Ciereszko, his service to the United States Marine Corps.

Mr. NORIEGA AND DR. LeoGrande, both in your remarks you talked about—Mr. Noriega you talked about maintaining support for the Cuban dissidents and funding for pro-democracy efforts, people-to-people contact. Dr. LeoGrande, similar sentiments as well about engagement. Engagement.

So the current policy really with President Trump is really one of disengagement and more sanctions-related. And I understand the thinking behind that, although there is a long history that says the sanctions are not working. I have been to Cuba several times, and I have to agree with that sentiment.

How do we get there? How do we get to a point of holding the Cuban leadership accountable through engagement? How does that

work if this system of sanctions has not been successful these many years?

Ambassador NORIEGA. Well, I think one of the points I wanted to make in my statement, Congressman, was that we have tried for 60 years to treat the Cuban Government as if it were a legitimate government. We have tried that and it has failed. I think we need to recognize that the purpose of the United States is not to sell rice and soybeans. It was put on earth to promote democracy and protect human rights and promote these shared values to make the world a better place.

Engaging the totalitarian regime of Cuba to the exclusion of the 11 million people in Cuba I think is a grotesque mistake. I think the idea that people who are going to the beaches of Cuba, to which Cuban people do not have access themselves, to suntan themselves and the idea that sunbathers are going to liberate Cuba is grotesque as well. The idea of American tourists doing pub crawls and rum tastings, tiptoeing through their tropical gulag in Havana I think is grotesque as well.

But I think it is a mistake for people to assert that we did not have travel to Cuba. Hundreds of thousands of American people travel to Cuba on a regular basis in different categories of travel.

The best ambassadors for the United States are Cuban Americans who are also the people who heap benefits, material benefits, on their family members in Cuba. The United States does some commerce with Cuba, but we cannot underestimate the importance of that personal contact of Cuban American family members. And I think that their wishes should have been respected by President Obama as he engaged the regime that keeps those people enslaved.

Mr. LYNCH. Let me ask Dr. LeoGrande. There is a sense among some people that ironically the sanctions have actually helped the regime by this rallying around the leaders there against the big, bad United States. What are your senses as opposed to sanctions versus engagement?

Mr. LEOGRANDE. Well, I think there is no doubt that Cuban leadership has used the hostility of the United States to try to rally Cuban nationalism, wrap themselves in the Cuban flag. And I think they have got 50 years of experience doing that. They know how to do it. They are pretty good at it.

I think in many ways President Obama's policy of engagement was a more difficult one for them to actually deal with because the boogeyman was gone, as Ambassador Roberta Jacobson said at one point. They could not point to the United States as the source of all their problems anymore.

With regard to engagement, I do not think it is really accurate that we spent 50 years treating the Cuban Government like a legitimate government. Up until most recently in 2014, our attitude was, in fact, that the Cuban Government was illegitimate. And we have the greatest sanctions still today against Cuba, greater than we have against any other country in the world. It is the policy of engagement that President Obama began, which began then to treat Cuba as a legitimate government, as at least a de facto government in the same way that we treat lots of governments around the world that we do not like as the de facto government because it serves our national interest.

Mr. LYNCH. Thank you.

Mr. Chairman, my time has expired. I yield back.

Mr. DESANTIS. The gentleman yields back.

The chair notes the presence of our colleague, who I did note for an opening statement, but I just want to ask officially unanimous consent that Ms. Ros-Lehtinen be allowed to fully participate in today's hearing. And without objection, it is so ordered.

And I would now like to recognize her for 5 minutes.

Ms. ROS-LEHTINEN. Well, thank you so much, gentlemen, for your gracious nature.

I surely appreciate it because this issue matters so much to me and to the constituents I represent. And there is no question that Castro ordered his Cuban air force to shoot down the two unarmed civilian aircraft, and they were identified as such, that killed Carlos, Mario, Armando, and Pablo.

Sadly, many of our allies around the world turned a blind eye to that atrocious attack and continue to this day to turn a blind eye to the abysmal human rights record, the violations committed every day by the Castro regime in Cuba. And for too long, the wrongs committed upon American citizens have gone unpunished, particularly in the case of the murders of these four brave pilots.

The Cuban regime is known, as you pointed out, Mr. Chairman, for harboring U.S. fugitives of justice, including William Morales, Joanne Chesimard, so many. And the regime is also known for its coziness with other U.S. designated foreign terrorist groups like Hezbollah and the FARC. The regime is responsible for destabilizing the governments of other countries in the region. In Venezuela, in Nicaragua, in Ecuador, we have seen Castro's hand in weakening the democratic institutions of those countries.

And I would ask the experts here under current U.S. law, what authorities or avenues are available for the families to sue or for the U.S. Government to bring to justice the individuals responsible for the shoot-down and other many human rights violations. Also, are there any legal barriers or restrictions that prevent this from happening, that could be resolved by an act of Congress? Or is it that administrations have lacked the political will? What do we need to do?

And finally, we hear about the international mechanisms to go after the regime, a tribunal set up by the U.N. Security Council, getting responsible nations to join us in holding the Cuban regime officials accountable for their human rights abuses. But how do we go about doing that, if we agree that we should? We know that Russia and China will block anything that we try to do on Cuba at the Security Council. Sometimes even our allies, who agree with us, as we saw with Ambassador Haley's statements on our withdrawal from the U.N. Human Rights Council yesterday, are unwilling to take that extra step and do the right thing. So what levers of persuasion or pressure can we use to get them on board?

So the legal barriers. What legal avenues are available for redress? And what can we do internationally to get others to help us?

Mr. POBLETE. Thank you, Madam Chairman.

I think the first step we have to take is focus on the political will to get us there. The legal mechanisms have existed. I think plenty of U.S. attorneys in your hometown have tried. I think what hap-

pens is that when the indictments reach Washington, something happens at the Department of State and at the Justice Department and at the White House potentially, and the whole thing—as the families have—they will share many stories with you over 2 decades' worth of trying to do this. Something just happens. It comes to a halt.

That is why I was recommending the first step, declassify everything we have. Empower the U.S. attorneys to pursue this again. The red notices frankly can be issued tomorrow if they wanted to do it for some of the existing indictments.

But also I think the other part of this beyond political will, because that is an important part of any justice equation in cases like these, you have to enforce U.S. law. U.S. law is not an embargo. It is a big myth that there is a comprehensive embargo in place against Cuba. That has not existed since 1992. There are difficulties in engaging in the Cuban marketplace, but it is not a comprehensive embargo because the law has never been enforced that way.

And that gets to your question and a lot of points that have been raised here. The U.S. Government has never tried to internationalize our strategy, as required in statute, to get our allies to cooperate with us. So in the case of some of these indictments and the red notices, we could work with our colleagues in Latin America, Asia, Europe, folks that want to work with us to pursue maybe the Interpol notices, to cooperate with us to bring these people to justice, to freeze assets, to freeze bank accounts to make it so that no international Cuban scofflaw can leave Cuba. We can do that tomorrow. We just need the political will to make it so.

Ms. ROS-LEHTINEN. Thank you, Mr. Poblete.

Thank you so much, Mr. Chairman, for your generosity.

Mr. DESANTIS. No problem.

The chair now recognizes the gentleman from Vermont for 5 minutes.

Mr. Welch: Thank you, Mr. Chairman.

First of all to moms who lost your sons, I join all of us in expressing my condolences to you and I admire your perseverance in behalf of their memory and justice for them. So thank you.

And Professor LeoGrande, just in your words describe how engagement would be helpful to young Cubans in an effort to modernize their political system?

Mr. LEOGRANDE. Well, the first thing it does, as we were speaking of earlier, is it takes away the regime's ability to blame the United States for all of Cuba's problems. I think engagement particularly extended travel—and I have to say that Americans are not lying on beaches thinking that that is going to liberate Cuba. The law still prohibits Americans actually from going to Cuba strictly for tourism.

But engagement with Americans has helped to build a new private sector in Cuba. There are now over 500,000 private businesses, not counting agricultural businesses.

Mr. Welch: Has travel gone down since the change in administrations?

Mr. LEOGRANDE. It has. Travel is down this year over last about 40 percent from the United States. And I think that is primarily

due to the travel warning that the State Department put in place when we had the order of departure from the embassy. The order of departure, of course, was required by law and it was not unreasonable to reduce the staffing of the embassy given the apparent danger that U.S. diplomats were in. But if that persists, then it does cast a shadow over our ability to have a more productive relationship with Cuba.

You know, young Cubans are hopeful. First of all, young Cubans, I should say, are much more critical of the Cuban regime than the older generation is. They are much less tolerant of its lack of freedom, its lack of economic and political freedom. But they have generally been, as all Cubans have been, supportive of a policy of U.S. engagement. There are a couple of polls that have been done by people here in the United States in Cuba asking Cubans what they think about the policy of engagement, and they have supported it.

Mr. Welch: All right. Thank you very much.

Mr. Noriega, there are human rights issues obviously in Cuba. And I know you are passionate about that in Cuba, and thank you for that. But do you believe those human rights standards should apply to all countries, freedom of expression, free practice of religion, and the right to form political association?

Ambassador NORIEGA. Yes. They are universally recognized human rights. I would have no problem endorsing those.

Mr. Welch: So I would take it you would believe the U.S., if it is going to be supportive of human rights in Cuba, should be supportive of human rights everywhere.

Ambassador NORIEGA. Of course.

Mr. Welch: There are some contradictions it appears to some outside observers. For example, last year, as you know, President Trump was with King Solman of Saudi Arabia, and there is an immense amount of evidence that there are serious human rights abuses in Saudi Arabia. And the President said we are not here to lecture. We are not here to tell other people how to live, what to do, or how to worship. How does that square with our advocacy, what we should be doing in Cuba?

Ambassador NORIEGA. I am happy to assure you, Congressman, I agree with you, that we should defend human rights everywhere.

Mr. Welch: Well, thank you.

Ambassador NORIEGA. You are welcome.

Mr. Welch: Professor LeoGrande, can you think of a principled reason why the President would cut off relations with Cuba for human rights reasons but at the same time withhold any criticism of human rights abuses in Saudi Arabia?

Mr. LEOGRANDE. Well, you know, in the history of American diplomacy, the United States has always supported human rights in principle, but in practical terms, we often balance our support for human rights off against other interests that we may have, economic, strategic interests. And I think that is what we see in the President's policy, as I said earlier, toward North Korea or his policy towards the Philippines and so on.

Mr. Welch: One last question. How are our farmers doing under the current policy towards Cuba?

Mr. LEOGRANDE. I am sorry. How are?

Mr. Welch: Are Midwest farmers doing?

Mr. LEOGRANDE. Right now because our farmers cannot get private financing, external financing for their sales to Cuba and the Cubans have to pay cash up front, we are not the most attractive customer for the Cuban Government. We have, nevertheless, been able to maintain several hundred million dollars of trade, but if that financing restriction were to be removed, the Cuban market is a \$2 billion agricultural imports market.

Mr. Welch: Thank you.

My time has expired. I yield back.

Mr. DESANTIS. The gentleman yields back.

The chair now receives himself for 5 minutes.

Ambassador Noriega, when Obama did his opening to Cuba, you had a lot of American corporations partnering and doing business with the Cuban military and the tourist industry, in particular, where those industries traffic in stolen property that was seized from the regime. So this conflicts with the Helms-Burton law, which I know you were heavily involved with, to protect the rights of Americans whose property was stolen in Cuba and the Trump policy prohibiting commerce with the military dictatorship. But yet, for decades, foreign companies have been trafficking in these stolen properties. And despite last year's reversal, American companies continue to do so as well.

In your opinion how should that problem be handled by the U.S. Government?

Ambassador NORIEGA. Well, I think it is more important than ever particularly that some U.S. companies are engaging and there are some travel and Carnival cruises and all these sorts of things going down using facilities in Cuba. It is more important than ever that we apply the law because there are Americans who are now essentially violating the concept of property rights of fellow American citizens. And so there are a couple of provisions that could be applied.

Title IV of the Libertad Act authorizes the Secretary of State to pull the visas of people who participate in that. And so there will be some American companies that have foreign executives who could potentially be impacted by that.

And you have title III, the right of action. It simply says go to a court of law and demonstrate that this is your property, that under the Libertad Act, this person was not authorized to use that property. And the person trafficking in that stolen property would be accountable to the other American, or for that matter, foreign companies could also be accountable to Americans if the President of the United States decided to stop waiving the right of people to bring action under title III of the Libertad Act, which the President could do tomorrow if he wanted to.

Mr. DESANTIS. Mr. Poblete, do you agree?

Mr. POBLETE. I think we have to find a way to bring Cuba to account on not only these claims but claims of the families. And the property issue—and this is odd coming from a lawyer, but the last thing some of us want to do is end up court trying to litigate cases and spending our client's money on litigation because litigation is expensive. But we need to use title III, the threat of it. We need to use title IV more robustly to bring Cuba to the negotiating table and stop hedging so much, not just on the certified claims but on

these cases. And I think that is how we need to approach the Cuba conundrum. I do not think it is that complicated. We have States in the Union that have a lot more GDP than Cuba will ever generate.

So I think it is a manageable issue, but I think right now what we really need is political will. I understand the arguments on both sides, but the claimants have been waiting a very long time. If we keep this curious ambivalence that has characterized U.S. policy for about 20 years, again Republican and Democrat administrations, who have not wanted to deal with this issue. But we must deal with this issue primarily because American citizens are being hurt. Secondly, American interests are being undermined. We are not the only ones trying to get into Cuba. The Russians are trying to get in there. China is trying to get in there. The Europeans are trying to compete with us.

So I think a concerted effort where there is political will from the Trump administration—the President laid out very clearly. End economic practices that disproportionately benefit the Cuban Government or its military, intelligence agencies, and what have you. It is a very broad approach where he is instructing the executive branch this is where I want to go. And I think it is in the execution where the executive branch officials and his advisors need to follow through on. And I think we can get to an agreement, but we have to finally tackle it and be willing to not punt it. We would love to have title III, but that is not the, I guess, economically optimal solution to this issue. We need a solution that we can negotiate directly hopefully with a future Cuban Government.

Mr. DESANTIS. Ms. de la Peña, is there any doubt in your mind that Raul Castro is responsible for the deaths?

Ms. DE LA PEÑA. None whatsoever and I hold him accountable.

Mr. DESANTIS. Ms. Ciereszko, any doubt that Raul Castro is culpable?

Ms. CIERESZKO. None at all. And I encourage you to listen to the transmission from the radio interview that he gave. I have provided that in my documents.

Mr. DESANTIS. You see our government will indict like Martha Stewart for some things. Why not indict Raul Castro for his role? These people just did not do this on their own. They were directed to do it by the regime and by Raul Castro. And I think that if the Trump administration would move forward with a series of indictments, but certainly that indictment, I think that that would send a very strong signal that this administration, like it has sent signals in other parts of the world, that it does mean business and it is going to take care of some of these issues that have been lingering for a long time.

I was in Jerusalem when they moved the embassy. That had been going on for decades. Finally we did it. You see other parts of the world where there is this movement.

So we need to bring an indictment against Raul Castro, and I hope they do that very quickly.

And I am out of time.

Steve, do you want to be recognized?

Mr. LYNCH. No. I have no further questions.

Mr. DESANTIS. Ileana?

Ms. ROS-LEHTINEN. No. Thank you so much.

Mr. DESANTIS. Well, I want to thank you guys for coming. I know it is frustrating when you are talking about an issue that has lingered, but my view is that you just cannot give up, and if there are ways where we in the Congress can be helpful to try to push forward with good policy, whether it is accountability or whether it is applying the law more vigorously so that the American people's objectives are met, we have got to do that. And so we did the Miami trip in January. That was illuminating, and then this hopefully will give us some momentum to go to the White House and say now is the time. Let us take some action.

With that, this hearing is adjourned.

[Whereupon, at 3:20 p.m., the subcommittee was adjourned.]

