

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 if 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. $\frac{3}{4}$ 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_0f.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.