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The Cuban Adjustment Act of 1966: More than Forty Years Later a Proposal for the Future

Javier Arteaga∗

I. INTRODUCTION – THE YEAR WAS 1966

United States’ armed forces, 250,000 soldiers strong, conduct raids in efforts to capture, wound, and kill the Viet Cong. Meanwhile, Americans hold demonstrations throughout the homeland in protest. Martin Luther King, Jr. leads a civil-rights march in Chicago, Illinois, during which he is struck by a rock thrown from an angry white mob. Actor Ronald Reagan, a Republican, is elected Governor of California, and Lyndon B. Johnson is President of the United States. “The Man Trap,” the first episode of the science fiction television series Star Trek, airs, and the Beatles play their annual American concert in New York’s Shea Stadium on a makeshift stage placed over second base. The U.S. Supreme Court rules in Miranda v. Arizona that the police must inform criminal suspects of their rights before proceeding to question them. The Freedom of Information Act is enacted into law. The year was 1966. Also in this colorful, yet dark, year in American history, Cuban nationals immigrated to the United States in

∗ J.D., Florida International University, College of Law, 2008. I would like to first thank my parents, Ana O. and Luis Arteaga. It was their efforts and love that figuratively and literally brought this paper to life. I would also like to thank my grandparents whose difficult decisions brought my family to the United States; Professor Troy E. Elder for continuous guidance; the Law Review staff at the Florida International University College of Law for providing the opportunity to write freely on this topic; the Class of 2008 for inspiring me; and Tanya R. Baur and Diana Arteaga for supporting me.

1 U.S. Strength Rises to 250,000, N.Y. TIMES, Apr. 29, 1966, at 3.
3 Gene Roberts, Rock Hits Dr. King as Whites Attack March in Chicago, N.Y. TIMES, Aug. 6, 1966, at 1.
4 Lawrence Davis, Reagan Elected by a Wide Margin, N.Y. TIMES, Nov. 9, 1966, at 1.
5 Johnson Greets ’66 with Family; Spends Most of First Day at His Desk, N.Y. TIMES, Jan. 1, 1966, at 21.
6 Ron Wertheimer, Captain’s Log: We’re Back and, Boy, Are we Young, N.Y. TIMES, Sept. 4, 1968, at E25.
9 Id.
11 See supra notes 1-10 and accompanying text (landmark events of 1966).
record numbers, and on November 2, 1966, Congress enacted, and President Lyndon B. Johnson signed, the Cuban Adjustment Act (“CAA”) into law.

November 2, 2006, marked the 40th Anniversary of the establishment of the CAA. The Act today reads as follows:

[T]he status of any alien who is a native or citizen of Cuba and who has been inspected and admitted or paroled into the United States subsequent to January 1, 1959, and has been physically present in the United States for at least one year, may be adjusted by the Attorney General, in his discretion and under such regulations as he may prescribe, to that of an alien lawfully admitted for permanent residence if the alien makes an application for such adjustment, and the alien is eligible to receive an immigrant visa and is admissible to the United States for permanent residence . . . . The provisions of this Act . . . shall be applicable to the spouse and child of any alien described in this subsection, regardless of their citizenship and place of birth, who are residing with such alien in the United States . . . .

Since the establishment of the CAA over forty years ago, Cubans have been granted unparalleled access to the U.S. Known as America’s “special favorites,” “self-imposed political exiles,” and “consumer refugees,” Cubans are the only group granted such “special privileges” and “favorable immigration laws.”

The favoritism is best illustrated through an anecdote. Five miles off the coast of Miami, Florida, a vessel carrying 131 Haitian nationals who had fled Haiti stopped and picked up two Cubans at sea. They were near death because their boat had capsized. When the vessel arrived in Miami, the Haitians were all sent back to Haiti. The two Cubans were granted

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12 Kennedys Conduct Hearing on Cubans, N.Y. TIMES, Apr. 14, 1966, at 9 (indicating that 300,000 Cubans awaited permanent residency in the U.S. in 1966).
access to the U.S. and after one year were eligible to receive green cards solely based on their nationality.\footnote{Note, The Cuban Adjustment Act of 1966: ¿Mirando Por Los Ojos De Don Quijote o Sancho Panza?, 114 HARV. L. REV. 902, 902 (2001) [hereinafter Don Quijote].}

Ordinarily, to qualify for admission to the U.S., an immigrant\footnote{Immigration and Nationality Act § 101(a)(15), 8 U.S.C. § 1101(a)(15) (2006) (the term “immigrant,” as defined by Congress in the INA, is every alien who does not fit within the classes of non-immigrants).} must fit within one of the various categories established by Congress.\footnote{See STEPHEN H. LEGOMSKY, IMMIGRATION AND REFUGEE LAW AND POLICY 239 (4th ed., Foundation Press 2005) (hereinafter Legomsky).} If an immigrant fits within a class he or she will be given a visa, a pass obtained at a U.S. consulate office outside the U.S. issued by the American government for the purpose of entering the U.S.\footnote{See Immigration and Nationality Act § 101(a)(16), 8 U.S.C. § 1101(a)(16) (2006).} The system provides two opportunities to examine the alien’s eligibility. First, while abroad, and second, on U.S. soil by Immigration and Customs Enforcement (“ICE”).\footnote{CHARLES GORDON, STANLEY MAILMAN, & STEPHEN YALE-LOEHRR, 1-1 IMMIGRATION LAW AND PROCEDURE § 1.03 (C) (I) (2006).} A nonimmigrant alien, one who enters the U.S. not intending to achieve permanent-resident status, e.g., a tourist, who later intends to permanently reside in the U.S., may adjust status under INA § 245.\footnote{See Immigration and Nationality Act § 245, 8 U.S.C. § 1245 (2006) (the CAA is a footnote of this section of the INA).} If an alien enters the U.S. without a visa, he or she is inadmissible, subject to removal from the U.S., and if removed from the U.S., barred from reentering for a period of ten years.\footnote{See Immigration and Nationality Act § 212(a)(7), 8 U.S.C. § 1212(a)(7) (2006).} The reason for highlighting these general procedural processes is because Cubans, under the CAA, are exempt from the visa process.\footnote{See Peter Slevin, Policy on Cuban Immigration Tangled in Contradiction, MIAMI HERALD, May 23, 1993, at 22A} Cubans upon arrival in the U.S. without a visa may still achieve permanent residency in the U.S.\footnote{Id.} All they need is the CAA. The bill allows “Cubans who have been living in the United States . . . to obtain full residence. This in turn will qualify them for eventual citizenship.”\footnote{Senate Approves Residence Status for Cuba Refugees, N.Y. TIMES, Oct. 21, 1966, at 7.} The CAA when enacted also applied retroactively up to thirty months; thus, those Cubans who arrived in the U.S. after June 2, 1964, could “waive half the waiting period of five years that is required for citizenship.”\footnote{See id.; Adjustment of Status for Cuban Refugees: Hearings Before Subcommittee No. 1 of the Committee on the Judiciary House of Representatives, 89th Cong. 11-20 (1966) [hereinafter Hearings] (Rep. Ball did not consider the waiver of 30 months to be a “large consideration.” The 5-year period was implemented to give aliens a reasonable opportunity to adjust and assimilate to life in the U.S. This period allowed an alien to “learn the ways of this country, and in that way to make himself or herself better qualified to assume the responsibilities of citizenship. The Hon. Ball, after explaining the necessity of the 5-year period, transitioned to why Cubans do not need the 5-year period, and never gave an}
future Cuban refugees, and continues to serve its favorable and expedited immigration benefits on Cubans in the U.S.\textsuperscript{29} This immigration dichotomy, i.e., the distinction made between Cubans and all other groups, as well as the present realities and future of the CAA are the focuses of this comment. Part II of this comment takes a look at the events that led to the enactment of the CAA.\textsuperscript{30} Part III considers the effects of the CAA over the past 40 years based on the considerations and statements made by the Members of Congress that created the CAA.\textsuperscript{31} Part IV proposes balancing the benefits of the CAA by including groups similarly situated to Cubans, particularly Haitians.\textsuperscript{32} Part V concludes this comment by summarizing how to eliminate the “preferential” treatment of Cubans by recognizing that Cubans and Haitians are inseparable for immigration purposes.\textsuperscript{33}

II. BACKGROUND – SUPPORT AND CRITICISM OF THE CAA

A. President Lyndon B. Johnson’s Speech and the Congressional Hearings Regarding Adjustment of Status for Cuban Refugees

On October 3, 1965, President Lyndon B. Johnson addressed the nation with regard to changes in America’s immigration policies.\textsuperscript{34} The presidential speech was given from Liberty Island, home of the Statue of Liberty, and at the base of an American flag about 75 yards from the statue.\textsuperscript{35} A
more patriotic setting could not have been scripted. The President announced that he

[opened] the nation’s gates to all Cubans who wanted to escape the regime of Fidel Castro and ‘seek freedom’ in the United States . . . . [T]hat it was in the spirit of America’s ‘tradition as an asylum for the oppressed’ that he was telling ‘the people of Cuba that those who seek refuge [in the United States] will find it.’

President Johnson was responding directly to a claim made by then-Prime Minister of Cuba, Fidel Castro, just days earlier. First, on September 28, 1965, and then again on September 30, 1965, Castro announced there was no penalty or consequence for Cuban nationals who wished to flee the island of Cuba for the U.S. The diplomatic feud that ensued between the two governments led to President Johnson’s approval of the most liberal U.S. immigration policies in over forty years.

On August 10, 11, and 17 of 1966, the spirit of President Johnson’s speech carried-over to a set of congressional hearings conducted by a subcommittee of the House Committee on the Judiciary. The reason for discussion was the various “views of the immediately concerned departments of government on the question of authorizing adjustment of status for Cuban refugees.” Adjustment of status, as previously mentioned, is the procedural process for achieving legal and permanent immigration standing in the U.S.; but, generally a visa is still required.

However, in 1966, the only means for a Cuban refugee in the U.S. to obtain a permanent visa was by leaving the U.S. and applying at an American consulate abroad, usually in Mexico or Canada. According to the Hon. George Ball, a participant in the August 10, 1966, hearing, this procedure had “not proved satisfactory” for three practical reasons. First, “the trip abroad is costly for many Cuban refugees; for many the cost is prohibitive.” An estimated 300,000 Cuban refugees were present in the U.S. in

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36 Id. (alteration in original).
39 See id.
42 See Hearings, supra note 28, at 4; Cuban Refugees Seek New Status, N.Y. TIMES, Nov. 15, 1966, at 15.
43 Hearings, supra note 28, at 4; Richard Eder, Ball Urges Immigrant Status for Cuban Refugees, N.Y. TIMES, Aug. 11, 1966, at 12.
44 Hearings, supra note 28, at 4.
“Only about 70,000 of the 300,000 . . . could afford this.” Second, American consulates abroad are too understaffed to handle claims by persons outside the local consulate district; thus, only a small percentage of applicants were being considered and a smaller percentage were granted visas. Third, admission into other countries was not often granted for the purpose of applying for an American visa from within said country.

Other more politically loaded concerns were expressed by the subcommittee while debating the “strongly supported” bill that created an expedited process and means for Cuban refugees to adjust their status to permanent residency. For example, the U.S. desired to “play a full and sympathetic role as a country of asylum for refugees from communism, whether the country of flight is located in the Eastern or Western Hemisphere.” Theoretically, every Cuban who fled Cuba for the U.S. inevitably became one more vote that favored a free, capitalist world. Furthermore, 

[American] policy . . . is one of opposition to the Communist regime in Cuba. Our goal and strong desire is that Cuba shall be freed from Communist domination and shall return again to the free world . . . . [T]his special help to Cubans . . . in no way reflects any change in our attitude or any lessening in our determination.

The bill in no way was meant to indicate that the U.S. supported or recognized Castro’s regime as legitimate. The subcommittee found it essential that this “basic consideration be fully clarified and emphasized . . . [to ensure no] public misunderstanding . . . .” Immigration reform provided relief to the Cuban people while maintaining a stringent anti-Castro position. “[The] decision to grant citizenship to the refugees should not be understood as an implicit concession that the . . . [Cuban] Government [is] more or less permanent.” Less political rationales for the CAA were peppered throughout the subcommittee’s hearings, but the tension between Cuba and the U.S. could not be denied. “This subcommittee appreciates the

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46 Id. (enactment of the CAA meant Cubans could become permanent residents of the U.S. by simply filling out an application. “The usual $25 fee for changing immigration status was waived.”).
48 Id.
50 See Hearings, supra note 28, at 4.
51 Id.
52 See Changes, infra note 80, at 234.
53 Hearings, supra note 28, at 4.
54 Id.
55 Id. at 5.
56 See id.
57 Eder, supra note 49, at 12.
assurances that . . . have been given today that adjustment of status for these Cuban refugees which the Department recommends be authorized, in no way reflects or infers a change in basic U.S. policy toward the Communist occupation of Cuba.

In a letter written by Deputy Attorney General Ramsey Clark on August 4, 1966, to the Hon. Emanuel Celler, Chairman of the Committee on the Judiciary, Mr. Clark detailed other justifications for exempting Cubans “from the proscription against natives of other Western Hemisphere countries as to eligibility for adjustment of immigration status.” First, an estimated 164,000 Cubans had arrived in the U.S. in a one-month period. Upon arrival in the U.S., the Cubans remained in an “indefinite and nonresident status [due to] the upheaval in their native country causing them to flee and remain in the United States.” Second, the U.S. severed all diplomatic ties with Cuba on January 3, 1961. This was a decision made by former-President Dwight D. Eisenhower after a series of failed negotiations with Cuba over sugar quotas and the increase of Cuban relations with the Soviet Union. Since then, it has been impossible for Cubans in Cuba to apply for an immigration visa for the purpose of seeking permanent residency in the U.S. Third, many professionally-trained Cubans who “would be a credit to this country” were prevented from gaining professional employment in the U.S. due to statutes that required full citizenship or a declaration of intent of citizenship before practicing certain professions (e.g., dentists, lawyers, physicians, and teachers). “Enactment of this legislation would remove many bars to the self-sufficiency of Cuban refugees” in the U.S. Fourth, the financial burden on the American government, with re-

59 Id. at 8 (several letters were presented as evidence during the hearings. They were read aloud to the Subcommittee members, and then discussed).
60 Id. at 9.
61 Id.
62 See id.
63 JORGE I. DOMÍNGUEZ, TO MAKE A WORLD SAFE FOR REVOLUTION: CUBA’S FOREIGN POLICY 23-25 (Harvard University Press 1989). Sugar quotas were constantly in debate between the U.S. and Cuba. After Castro took control of Cuba, he eliminated the quotas “for the sake of independence.” In 1960, the U.S. attempted to improve relations with Cuba, but “the Castro regime virtually paralyzed the negotiations with various excuses and evasions which were designed to gain time until” a pact was signed with the Soviets. On July 6, 1960, President Eisenhower cut the sugar quota by 95 percent, and three days later, on July 9, 1960, the Soviet Union agreed to buy from Cuba all the sugar that the U.S. refused to purchase. In December 1960, the U.S. sugar quota was fixed at zero. On January 1, 1961, Cuba restricted the personnel of the American embassy in Havana as the U.S. “broke off diplomatic relations” with Cuba.
64 Hearings, supra note 28, at 9.
65 Id.
66 Id.
gards to unsettled Cubans, would be reduced. These rationales or concerns will later be discussed in Part III of this comment in light of the past forty years of political stalemate and change.

Perhaps the most interesting dialogue took place between the Hon. George Ball, Under-Secretary of State, and Rep. Frank L. Chelf from Kentucky.

Mr. Chelf: Mr. Secretary, I listened very carefully to your testimony. I would like to ask you again, for the record, just to be sure, outside of the humanitarian feature that is involved here, do you sincerely believe that this legislation is in the best interests of the United States? That is the thing that I am interested in. I want to do all that I can to help others, but the point that worries me—you see, we have helped 100 nations and we have given 122 billions of our dollars away, only to have the fellows overseas now, who are fat and sleek and rich, to take our own dollars and demand our gold out of Fort Knox. Now, I know it is going on and everybody else knows it, but will this help us here?

. . . .

Mr. Ball: We would be extending to [the Cubans] the privilege of living in a free society. This is consistent with the principles that we have followed in our dealing with nations around the world, to encourage freedom, to encourage resistance to totalitarianism. We have a feeling that this would be a contribution to creating a consistent vision of the United States of a nation that practices what it preaches and which extends to people who are hard pressed under totalitarian regimes the possibility of becoming useful citizens of the United States working toward the general cause of freedom.

Mr. Chelf: Being very much interested in it, and to the extent that I paid my own way out of my own pocketbook, I made a trip, incognito, down to Florida in April of this year. I had been hearing about the Cubans and how many we had and what they were doing, and all that sort of thing. . . . [N]o newspaper, nowhere, at no time knew I was there. I got some good information and I just want to say this to you: I think that you are exactly right, for the very simple reason I saw lawyers and doctors and other professional men working at menial tasks, something that was foreign to them but yet they had mastered to the best of their ability that trade. I saw with my own eyes firsthand these people and I talked to them in my broken Spanish as best I could, and

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67 Id. In Part III of this comment these rationales will be discussed in light of the past 40 years of political stalemate and change.
let me tell you something, I was very much impressed with them. They are very fine people and they come from good stock."  

The debate continued, but the essence of the conversation is summarized by a point made by the Hon. George Ball. He found that the adjustment of the immigration status of Cuban refugees was "necessary." "If we do not take this step . . . [it] is going to be a pretty unedifying spectacle to many nations of the world. And many people are going to doubt whether the United States really means what is says."  

Nicholas De B. Katzenbach, then Attorney General of the United States, also backed the bill. "Such legislation would be a humane postscript to the message formulated by our Government and voiced by the President," said the Attorney General while referencing President Johnson’s speech from Liberty Island. However, the Attorney General noted that the adjustment of status was not automatic. It was to be voluntary on the part of the Cubans, and subject to the discretion of the Attorney General.  

B. Statistical Background  

At this point, some statistical background will help clarify why former President Lyndon B. Johnson and Congress found it necessary to install the Cuban refugee reform laws. On August 17, 1966, the Hearings continued. This time representatives of the Department of Health, Education, and Welfare ("Department") were in the hot seat. According to the Department, there were three stages in Cuban migration to the U.S.  

The first period was January 1959 – October 1962. On January 2, 1959, Fidel Castro marched into Havana and proclaimed, "[t]he revolution begins now." At this stage, no one could predict the future of the regime, but as the Cuban government began to enact "agrarian reform laws and other measures to confiscate private enterprises," there was an increase of Cubans seeking asylum to the United States. The years 1960-1962 saw more confiscations by the Cuban government, and the eventual management and control of these properties. At this stage, professionals and
technicians, those formerly in control, left Cuba for the U.S. These persons have been called the “Golden Exiles” for their high level of education, political and business connections, and entrepreneurial know-how. Diplomatic tensions grew to a destructive stage in 1961 when the U.S. government was forced to sever its relations with Cuba; meanwhile, Cubans continued to flee the island. An estimated 215,000 refugees fled Cuba during this three year period.

The second period was October 1962 – October 1965. Cuban migration to the U.S. was brought to a standstill for three years after the Cuban Missile Crisis in October of 1962. After the Cuban Missile Crisis, the vast majority of Cuban refugees already in the U.S. were in Miami, and an estimated 68,000 were receiving financial assistance from the U.S. government. During this three year period, an estimated 74,000 Cubans emigrated to the U.S. The total number of Cuban refugees nearly doubled as a result of Castro’s September announcements when he permitted the release of Cubans with no penalty or consequence, and “opened the fishing port of Camarioca to all exiles [in the U.S.] wanting to take their relatives from the island.” The sea and weather caused a dangerous combination, and both governments found it necessary to negotiate an accord. The U.S. agreed to transport nearly 4,000 Cubans per month by air as a continuation of its open arms policy, while Cuba regulated its ports. The “Freedom Flights” provided a means to reach the safe haven of the U.S. for more than 260,000 Cubans over a span of eight years.

The third period was October 1965 – August 1966. After President Lyndon B. Johnson announced the new policies that governed the arrival of Cuban refugees, an influx began and nearly 93,000 Cubans settled in the Miami, Florida, area. In general, the Department of Health, Education, and Welfare found that the Cubans were “cooperative and worthy, in every respect of our assistance.” Reasons given for these sentiments included

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79 See id.
80 Heike C. Alberts, Changes in Ethnic Solidarity in Cuban Miami, 95 (2) THE GEOGRAPHICAL REV. 231, 233 (Apr. 2005) [hereinafter Changes].
81 See Hearings, supra note 28, at 50.
82 No Foot, supra note 16, at 441.
83 See Changes, supra note 80, at 234.
84 See Hearings, supra note 28, at 50.
85 No Foot, supra note 16, at 442.
86 See id. at 443.
88 Changes, supra note 80, at 234-35.
89 Id.
90 Id.
91 See Hearings, supra note 28, at 51.
92 Id. at 52.
the following: excellent adjustment into American communities, good work record, employers sought them out for employment, and few needed public assistance.93

C. Refugees and the law

International refugee law began to take shape in 1921 with the issuance of what was known as a “Nansen passport.”94 Fridtjof Nansen was the High Commissioner for Russian Refugees of the League of Nations in 1921.95 “The task of the High Commissioner in the legal field was the legal and political protection of refugees.”96

In 1950, the United Nations established the Office of the United Nations High Commissioner for Refugees (UNHCR) and the Statute of UNHCR to develop the functions of predecessor organizations, as well as to promote international conventions protecting refugees, supervise their application, propose amendments, and promote admission of refugees.97 In 1951, the United Nations adopted the Convention Relating to the Status of Refugees.98 The Convention is regarded as “the most important international instrument relating to refugees.”99 It defines refugees broadly in order to ensure a universal approach to the Convention and the protection of refugees.100 The term refugee according to the Convention applies to a person who:

[a]s a result of events occurring before 1 January 1951 and owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership in a particular social group, or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.101

The protections of the Act apply to refugees regardless of their country of origin.102

93 See id.
95 Id.
96 Id. (internal quotations omitted).
97 See Legomsky, supra note 20, at 925.
98 Refugee Law, supra note 94, at 28.
99 Id. at 29.
100 Id.
102 Refugee Law, supra note 94, at 29.
Most importantly, Article 33 of the Convention, through the principle of *non-refoulement*, restricts expulsion or deportation of refugees. “No refugee shall . . . be expelled or returned in any manner whatsoever to the frontiers of territories where his or her life or freedom would be threatened on account of race, religion, nationality, membership in a particular social group, or political opinion.” The principle of *non-refoulement* is the cornerstone of refugee law, and has risen to the level of general principle of law, customary international law, and *jus cogens*. More specifically, as *jus cogens*, the principle of *non-refoulement* and Article 33 of the Convention are a “mandatory or peremptory norm of general international law accepted and recognized by the international community as a norm from which no derogation is permitted. A peremptory norm can be modified only by a later norm that has the same character.”

On January 31, 1967, the U.S. ratified the Protocol relating to the Status of Refugees, a broader version of the Convention that removes the January 1, 1951 date from the refugee definition. Contracting states of the Protocol apply the substantive provisions and refugee definition in the Convention with the omission of the January 1, 1951. However, nothing in the Convention or Protocol “requires any nation to admit overseas refugees in the first place.” The Convention and Protocol allow for the exclusion of certain persons from protection: persons resettled elsewhere and certain criminals. What has ensued are certain exclusions that “nullify the protection against refoulement . . . [and] render the entire Convention inoperative.”

When President Clinton ordered the U.S. Coast Guard to intercept Haitians attempting to reach the U.S. by sea and to return them to Haiti without determining their qualification as refugees, the Supreme Court of the United States, in *Sale v Haitian Centers Council, Inc.*, held that Article 33 had not been violated because it did not apply to the situation. According to the Court, “the text and negotiating history of Article 33 . . . are both completely silent with respect to the Article’s possible application to actions taken by a country outside its own borders . . . . [B]oth the text and the negotiating history . . . affirmatively indicate that it was not intended to have extraterritorial effect.” The respondents argued that the words “any

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103 *Id.* at 31.
104 *Id.*
107 See *id.*
108 See *Legomsky*, supra note 20, at 926.
109 See *id.*
110 See *id.*
112 *Id.* at 178-79.
aliant” and “return” are not limited to aliens within the U.S., but the Court found that “return” had a narrower legal meaning compared to its common meaning.

The majority expressly acknowledged that the drafters of the Convention and Protocol may not have contemplated a contracting state “gather[ing] fleeing refugees and return[ing] them to the one country they had desperately sought to escape.” The majority expressly stated that such action may “violate the spirit of Article 33,” but it was not persuaded. Justice Blackmun, however, was compelled to dissent. He believed any expelling or return (refoulement) is a violation of Article 33. “The terms are unambiguous. Vulnerable refugees shall not be returned. The language is clear, and the command is straightforward; that should be the end of the inquiry. Indeed, until litigation ensued, the Government consistently acknowledged that the Convention applied on the high seas.”

The UNHCR supervises the implementation of the Convention and cooperation of the contracting states. Unfortunately, neither the Convention nor other sources of international law give the UNHCR the power to compel or issue binding interpretations. In the U.S., no statute authorizes the admission of refugees. Instead, Congress has occasionally passed ad hoc legislation to deal with specific crises, i.e., Cubans who left Cuba after Fidel Castro assumed power, rather than addressing possible violations of international law.

The Convention and the Protocol are the most important instruments regarding refugees, but they are not the only treaties that afford refugees broad rights and protections. The Agreement relating to Refugee Seamen was adopted on November 11, 1957, and extends protection to seamen who are “in the absence of documents, frequently unable to go on land.” It requires contracting states to issue travel documents to refugee seamen who are linked to the contracting states either through previous residence, previous travel documents, or service on a ship carrying a contracting state’s
The U.N. Convention relating to the Status of Stateless Persons, September 28, 1954, protects refugees who are not considered to be nationals of any state, thus extending protection to stateless persons who are not covered by the 1951 Convention. The U.N. Convention on the Reduction of Statelessness, August 28, 1961, helps stateless refugees acquire nationality. The U.N. Convention on the Recovery Abroad of Maintenance and Protocol No. 1 to the Universal Copyright Convention also extend benefits specifically designed for refugees.

In 1980, Congress was led to pass the first comprehensive refugee legislation in U.S. history. The Refugee Act of 1980 is the principal U.S. statutory law governing overseas refugees. It provides the first domestic definition of refugee, requiring “persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion.” In what appeared to be a step in the right direction for refugees wishing to reach the U.S., the 1980 Act deleted all ideological and geographical limitations from the refugee definition. However, the courts have narrowed the definition in various ways, and refugees, such as Haitians, continue to be refouled to their home country.

D. Criticisms from 1966

The CAA did not pass without some criticism. Some House Representatives were concerned with allowing too many Cubans to enter the United States in a short period of time. According to these conservative
Representatives, they were trying as best they could to “protect the rights—that is, the job rights—of our own people, and particularly our southern colored people.” The more liberal countered by pointing to the fact that the country’s unemployment rate was at its lowest ever, but Rep. Arch Alfred, Jr. from West Virginia responded to the liberals:

Sure we have a low rate of unemployment, but I remind my colleagues that we have 500,000 men . . . in South Vietnam, and we are experiencing the largest draft call we have ever had in any period of time . . . . So as we consider this legislation let’s keep [the war and the unemployment rate] in mind.


Today’s most forthcoming concern was foreshadowed by Rep. Moore. He wondered whether another group would factually fit the mold of Cubans and what would happen to them? He asked the Attorney General, “[w]ould you feel free to make parole available on any set of fact which you might want to characterize as being refugee in character?”

Essentially, Rep. Moore was asking whether persons similarly situated to Cuban refugees would receive the same special treatment. The Attorney General responded:

It seems to me it would be foolish for me to flatly predict there could not be another situation. I don’t foresee one. I don’t know of any. I would hope to goodness there is not going to be another Castro kind of situation within this hemisphere. I don’t foresee one. I don’t think it will occur, but would say this: If you have the same kinds of facts that we have had with respect to Cuba, then I would suppose that we would do the same thing and feel that this was exercising the power in the public interest, but I don’t foresee that.

The Attorney General’s predictions were not accurate. The conservative Representatives had a problem with the “administrative liberalization of parole,” i.e., the extension of the law with regards to

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139 Id. (statement of Rep. Chelf).
140 See id. at 32-33.
141 Id. (alteration in original) (citations omitted).
142 Id.
143 See Hearings, supra note 28, at 32-33.
144 Id. (alterations in original) (emphasis added).
145 See Pierre M. Atlas, U.S. Must Change Policies That Harm Haitians, Cubans, INDIANAPOLIS STAR, Oct. 6, 2005, at A12. “[T]hanks . . . in part to U.S. policies, Haiti is in many ways worse off than Cuba. The poorest country in the Western Hemisphere, Haiti is rife with armed gangs, a corrupt government and ineffective United Nations peacekeepers.” Id. The U.S. government should “care about people and not just ideologies. Lifting the outdated sanctions against Cuba and supporting genuine democracy in Haiti could be a start.” Id.
refugees in a manner that favored a group at the discretion of the Attorney General.\textsuperscript{146} The Attorney General was continuously questioned on the matter, but in the end, Rep. Moore disclosed that the reasoning behind the questioning was only to “determine how far this might be . . . stretched to accomplish anyone of a number of ends . . . . I just made the observation so that he might know that there are some of us in the Congress just wondering how far this . . . could possibly go. . . .”\textsuperscript{147} Apparently, from the tone of the Representatives and the line of questioning, Congress appeared to be willing to grant this one time exemption to Cubans, but it was hoping to not deal with this or any other refugee group claim in the future. Nevertheless, three months after the Hearings, H.R. 15183, the Cuban Refugee Adjustment Act of 1966, was enacted into law.\textsuperscript{148}

E. The Underpinnings of the Hearings

One fact mentioned at length throughout all three days of Congressional Hearings focused on the Cubans’ length of stay. The bill passed under the expectation that the majority of refugees would return to Cuba once freedom reigned on the island.\textsuperscript{149} The Subcommittee also did not expect the Castro regime to survive.\textsuperscript{150} Not only did the Subcommittee expect that Communism would fail in Cuba, they also expected the paroled refugees to return to Cuba.\textsuperscript{151} The Hon. Ball, in a statement to the Subcommittee, mentioned that once Cuba was free again, “the status of the Cubans as residents and parolees would in no way affect their freedom to return to their native land.”\textsuperscript{152} Later during the Hearings, the Hon. Ball further mentioned that the U.S., through passage of the bill, only “extend[ed] the option [of adjustment] to those who want it . . . . [E]ven though at some time in the future, when Cuba does become free—because I am certain it will—some of them may wish to go back and resume their life there.”\textsuperscript{153}


Rep. Cahill: Don’t you think the efforts that will pave the way for eventual American citizenship will be a deterrent rather than an incentive for them to return to Cuba?

\textsuperscript{146} Hearings, supra note 28, at 40.
\textsuperscript{147} Id.
\textsuperscript{149} See Hearings, supra note 28, at 53.
\textsuperscript{150} See id. at 5.
\textsuperscript{151} See id.
\textsuperscript{152} Id.
\textsuperscript{153} Id. at 14 (alteration in original).
Hon. Ball: I wouldn’t think so because the reasons that would lead them to return to Cuba is that love of country which I think you will find is very deep among most Cubans. They want to go back to Cuba. They want to rebuild their country and they will do so when the opportunity –

Rep. Cahill: Then why should we grant these people American citizenship?

Rep. Cahill: . . . [I]sn’t there some other way of doing this besides granting of citizenship?

Rep. Cahill: This legislation would be open-ended, would it not; there would be no termination, and there could be unlimited number.

Rep. Cahill: Therefore, it seems to me that the Cuban refugees . . . will love the way we live and won’t want to go back to their native land. We are really closing our eyes to reality if we expect that these people will return to the conditions from which they have come . . . . A great deal of thought . . . should be given to [the bill] because we are indeed, in my judgment, setting a precedent which will have far-reaching effects in the future.154

The Representative from New Jersey was correct, but his concern with setting precedent was never realized because Congress has refused to extend the same preferential treatment to other similarly situated refugees.155 Per-
haps Rep. Cahill’s true concern was not with setting a precedent, but having to regularly replicate a pro-refugee decision in the future.

F. An Image Change

The Congressional Hearings provided a romantic image of the Cuban immigrant—the model minority.\textsuperscript{156} They had been characterized as hard working professionals who were an asset to American communities.\textsuperscript{157} However, this image changed in 1980. In April of 1980, a group of Cubans seeking political asylum crashed a bus through the gates of the Peruvian embassy in Cuba.\textsuperscript{158} The Peruvian government refused to hand over the Cubans at the request of the Cuban government.\textsuperscript{159} In response, Fidel Castro announced that any Cuban who wished to leave Cuba should assemble at the Peruvian embassy.\textsuperscript{160} An estimated 10,000 men, women and children squeezed into the embassy faster than negotiations with third party states initiated.\textsuperscript{161} Meanwhile, Cuban exiles in the U.S. began to prepare a massive boatlift.\textsuperscript{162} Fidel Castro once again opened a port in Cuba, and caused an exodus of Cuban immigration in the U.S.\textsuperscript{163}

The 1980 “Freedom Flotilla” consisted of Cuban exiles in the U.S. venturing by boat to the port of Mariel, Cuba, to pick up their relatives.\textsuperscript{164} “In May 1980, the boatlift was at its height. More than 16,000 refugees arrived in one six-day period alone. “By the time the 159-day exodus ended on Sept. 26, 1980, nearly 125,000 Cuban refugees escaped to the United States.”\textsuperscript{165} Boats of ex-immigrants returned to Cuba to help Cubans escape,\textsuperscript{166} but this time the U.S. was not receiving boat loads of professionals. Castro sent the U.S. what he described as the scum of his country, i.e., antisocialist, homosexuals, drug addicts, and gambling addicts.\textsuperscript{167} Almost

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\textsuperscript{156} See \textit{The Other}, supra note 15, at 690-91.
\textsuperscript{157} See id. at 691.
\textsuperscript{158} \textit{Changes}, supra note 80, at 237.
\textsuperscript{159} Id.
\textsuperscript{160} Id.
\textsuperscript{161} Id.
\textsuperscript{162} Id.
\textsuperscript{163} See \textit{Transformation}, supra note 87, at 18.
\textsuperscript{164} See id. at 20.
\textsuperscript{165} E.A. Torreiro & Luisa Yanez, \textit{From Mariel to Miami Cuban Refugees Changed the Face of South Florida}, SUN-SENTINEL, May 21, 1995, at 1A.
\textsuperscript{166} See id. ("Cuban-Americans spent more than $1 million to charter boats to pick up relatives," in a flotilla that stretched 90 miles from Key West, Florida, to Mariel, Cuba, and back.).
\textsuperscript{167} See \textit{Transformation}, supra note 87, at 21.
half of the new arrivals had criminal backgrounds that ranged from theft, possession of drugs, fraud, and crimes against the normal development of sexual relations. The influx caused then President Jimmy Carter to take steps contrary to the spirit of the CAA, President Lyndon B. Johnson’s speech, and the thoughts expressed during the 1966 Congressional Hearings. The boats carrying refugees were ordered to be stopped and seized.

The arrival of these Cubans coincided with a departure from the political outlook toward Cuban immigrants. “Until 1980, Cuban exile politics had focused on the idea of returning to the island,” however, the new exodus in addition to a lack of imminent diplomatic change in Cuba, led to the realization that the Cuban exiles intended to stay in the U.S. Nevertheless, the 1980 group of Cubans received the same treatment as the group that immigrated in the late 1960s. The Carter administration’s Open Hearts and Open Arms Policy relied on the CAA as it allowed the Cuban immigrants to find refuge from political persecution in Cuba and seek asylum in the U.S.

More change in the treatment of Cubans resulted as Castro attempted to repeat the events of 1980. In 1994, Castro once again pried open the exit doors of Cuba to those wishing to take flight; however, this group was dissimilar to both previous groups. Unlike the first two groups, the majority this time set sail on rafts made of inner tubes, boxes, planks of wood, and any floating material that could be tied together. Not only did they arrive in a different manner in comparison to the predecessor groups, but they also received different immigration treatment from the U.S. government.

In August of 1994, President Bill Clinton and Cuba opened diplomatic discussion with the goal of “defusing the refugee crises.” The Clinton Administration took the position that Cubans were risking their lives at sea on rafts, and thus the Cuban government should stop the exit flow.
U.S. now sent a new message to Cubans who wished to reach the U.S. “The boat people would not be admitted.” 178 Roughly 12,000 Cubans were intercepted at sea by the U.S. Coast Guard, and on August 19, 1994, President Clinton “reversed longstanding policy and ordered that the boat people be barred from the United States and instead be taken to Guantánamo Bay [U.S. Naval Base, Cuba].” 179 However, the agreement to completely stop the flow of immigration to the U.S. was not successful. 180

G. Fidel Castro’s View

According to Castro, “this is the killer Cuban Adjustment Act.” 181 “It is a perverse policy, deliberately conceived to destabilize and suffocate Cuban society, cynically calculated to provoke death and suffering, shamelessly manipulating the tragedies that this law causes.” 182 Cubans are encouraged to immigrate illegally and place their lives in danger. 183 Further, the Act is to blame for the international custody battle of Elian Gonzalez. 184 The CAA is a form of political ammunition for his enemies “who describe the migrants as desperate boat people fleeing their communist homeland for freedom.” 185 For support, Cuban leaders point to Haitians and Dominicans. 186 These groups seek the same opportunities in America as Cubans, but they are not allowed to stay. 187 “In a colossal operation of falsification . . . and promotion of lies, [the U.S.] has tried to present Cubans as people who want to ‘escape’ to North America, and that the United States as a ‘generous’ nation receives them. [That argument] doesn’t contain an atom of truth.” 188

178 See id. at 13.
179 See id.
182 Id.
183 Id.
184 Id.; See Key Figures in the Elian Gonzalez Case, ST. LOUIS POST-DISPATCH, Apr. 23, 2000, at A4. On November 25, 2000, Elian Gonzalez, a 6-year old Cuban national, was found adrift on an inner tube off the Florida coast. Id. His mother and others died in the sea voyage. Id. Elian became the subject of an international standoff between his father in Cuba and Miami relatives. Id. After his Miami family refused to hand him over, an extremely media publicized raid took place, after which Elian was returned to his father and Cuba. Id.
185 Snow, supra note 181, at A12.
186 Id.
187 Id.
188 Id. (alteration in original).
III. ANALYSIS – THE CUBAN ADJUSTMENT ACT TODAY

A. The Wet Foot, Dry Foot Policy

Cuban immigrants who seek to invoke their special privileges under the CAA must now rely on an immigration legislation anomaly. The significance of the 1994 agreement between the Cuban government and Clinton Administration is that when coupled with the CAA, those Cuban immigrants who are captured at sea are returned to Cuba, but those who reach American soil may invoke their rights under the CAA. The anomaly has come to be known as the Wet Foot, Dry Foot Policy.189

The struggle to reach the U.S. now extends beyond the rigorous and life-threatening voyage through the 90 mile straight between the U.S. and Cuba.190 Today, the highest drama takes place on the beaches of South Florida.191 “Cubans try almost anything, including threatened self-immolation and suicide, to hold off the Coast Guard long enough to put at least a foot on dry sand.”192 Cuban mothers have gone as far as threatening to drown their own children if Coast Guard members come too close.193 Altercations are numerous, and guaranteed to continue in the future.194 Therefore, “the politics of applying migration law have to be revised to become more hu-

189 See No Foot, supra note 16, at 445.
190 See id.
191 See Rick Bragg, Cubans Now Choosing Smugglers Over Rafts, N.Y. TIMES, Jul. 21, 1999, at 1.
192 See id.
193 Id.
194 See id.
195 See id.; Cuban Immigrants Land in So. Florida, UPI NEWSTRACK, Jan. 21, 2007 (27 Cuban immigrants land on an island near Key Biscayne, Florida; however, earlier in January 2007, 91 refugees were captured at sea and returned to Cuba); Cuban Landing Shows Security Flaw, WORLD, Jan. 2, 2007 (25 Cubans were found huddled on the beach of Beer Can Island off the west coast of Florida); Immigration Issues: Cubans Make It to the United States, S. FLA. SUN-SENTINEL, Dec. 29, 2006, at A22 (15 Cubans reached an abandoned portion of the Old Seven Mile Bridge in the Florida Keys. They were wrongfully repatriated as U.S. immigration officials claims the bridge did not constitute dry land under the Wet Foot, Dry Foot Policy. Months later, 6 of the wrongfully repatriated Cubans did the impossible — “they made another perilous escape to the United States, this time being admitted.”); Joel Maroney, Cuban Boats No Surprise—Marco Landing of 20 Refugees Comes With Local Officials Watching Layout Space, NEWS-PRESS, Aug. 16, 2006, at A1 (20 Cubans land on the shores of Marco Island, Florida. The small island off the west coast of Florida is accustomed to these arrivals, but authorities mention that they are not the first in line for Cuban refugees. The Florida Keys are only 90 miles from Cuba, and are the more logical choice of destination. The seas are difficult to navigate, so refugees often mist their intended marks); Madeline Baro Diaz, Family In Floating Cab Ask to be Let Into U.S., S. FLA. SUN-SENTINEL, Jun. 9, 2005, at B1 (a Cuban family tried to float to Florida on a vintage vehicle-turned boat. The family had applied for exit visa, but one was denied because she was a doctor and another because he was old enough for military service); Copter Flies 34 Cubans to Freedom Asylum-Seekers Land Near Miami After Commandeering Craft in Daring Escape Plot, ROCKY MOUNTAIN NEWS, Jan. 4, 1992, at 2 (34 Cubans commandeered a tourist helicopter and flew from a resort in Varadero, Cuba, at low heights to avoid Cuban radars, to the U.S. At least on one other occasion, a Cuban major flew a Mig fighter jet to the U.S. Cubans have also flown small crop-duster planes to the U.S.).
Change in Cuba does not appear to be imminent, and Cubans will continue to risk their lives in hopes of setting foot on American soil and invoking the CAA.

B. Comparing the Concerns Voiced During the 1966 Congressional Hearings and the Current State of Cuban Affairs and Immigration Policy

The current diplomatic situation between the U.S. and Cuba is inadequate. In the past, when confronted with various exoduses of Cuban immigrants, Congress held Congressional Hearings or discussions with the government of Cuba. Today, Cuba and the U.S. continue to be at a diplomatic stalemate. In light of the diplomatic silence and the current anomaly posed by the Wet Foot, Dry Foot policy, I offer a foreshadowing of

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196 Bragg, supra note 191 (statement of Ramon Saul Sanchez, delegate with Movimiento Democracy, a Miami based anti-Castro group).

197 Growing up Cuban in Miami, Florida, you develop a thick skin against news from the island because rumors about change in Cuba are constantly presented and proven to be untrue. See Vanessa Arrington, From Appendicitis to Poisoned Cigars, Fidel Castro Has Repeatedly Defied Death, ASSOCIATED PRESS ARCHIVE, Aug. 6, 2006. In 1961, the C.I.A. trained Cuban exiles for the Bay of Pigs invasion and Castro’s assassination. Id. Nearly 150 Cubans were killed, but Castro was unharmed. Id. There have been more than 30 plots to assassinate Castro. Id. All of which were unsuccessful. Id. With each attempt or illness, hope of a better future rises. Id. With each failed attempt or recovery, hope slips away. Id. “Cubans have no idea whether dictator Fidel Castro is lying at death’s door or sitting up and watching reruns of ‘Jeopardy.’” Stephanie Mansfield, Cubans in Dark on Fate of Fidel – Parallel Noted in Soviet Deaths, WASH. TIMES, Aug. 8, 2006, at A01. Cubans in Cuba and the U.S. were left wondering what had happened to Castro. Id. In Miami, they awaited news of Castro’s death with champagne, beeping car horns, and Cuban flags. Id. Expectations once again proved to be untrue. Id. For example, rumors about Castro’s death caused uproars of celebration in the Cuban enclaves of South Florida, but once again, like so many times before, possible change in Cuba turned out to be a hoax. See After Fidel Miami Smartly Reconsiders Post-Castro Event, S. FLA. SUN-SENTINEL, Feb. 3, 2007, at A18.

198 See Pablo Bachelet & Frances Robles, Cuba Cuts Power to U.S. Mission, MIAMI HERALD, Jun. 13, 2006, at A1. “Electricity to the U.S. Interests section—not quite an embassy because Cuba and the United States do not have formal diplomatic relations—was cut off at 3 a.m. on June 5, [2006].” Id. The electricity incident was another event in what has been a “dramatic escalation of a campaign of harassment of American diplomats that allegedly includes poisoning a family pet and shutting off water.” Id. Other examples of harassment on the part of Cuba officials include the following: not awarding visas to newly appointed U.S. diplomats; denying requests for transportation, computers, and other supplies; preventing the hiring of Cuban maintenance workers; restricting gasoline access; and denying exit permits to Cuban employees who need training abroad. Id.

199 See Hearings, supra note 28.

200 Bob Deans, U.S. Relations With Cuba Ripe For Thaw With a Democratic Majority, Those Who Favor Closer Ties See Opportunity to Reverse Strict Bush Policy, ATLANTA JOURNAL-CONSTITUTION, Feb. 4, 2007, at A18. The former Republican controlled House and Senate have been hesitant to challenge restrictions on Cuba. Id. “Conservative Cuban-Americans in South Florida have long been active in pressuring Washington and flexing their political muscle within the GOP to maintain sanctions on Cuba.” Id. However, with the new Democratic control of the House and Senate, some sanctions may be challenged. Id. Some argue that common sense leans toward the creation of a strong relationship with Cuba. Id. “Whether we like or dislike, or agree or disagree, with the government there,” said Rep. Ray LaHood (R-III). Id. Others counter by calling any potential lift of sanctions against Cuba as a victory for Castro. Id. To many, the sanctions “remain[] a powerful symbol of U.S. opposition to Castro.” Id.
what Congressional Hearings on the state of Cuban affairs and immigration policy would appear like in 2008. Comparing the remarks and concerns of the representatives present at the 1966 Hearings prove useful to understanding the growing concern over the current preferential treatment of Cubans. The following is a selection of the issues raised in 1966 followed by modern hypothetical responses.

According to the 1966 Hearings, the CAA was passed to improve the plight of the thousands of Cubans who left Cuba because of the oppression faced at the hands of a communist Cuban government. The U.S. desired to play a “full and sympathetic role” as a home for refugees from a communist government.

Today, there have been no significant changes in the approach the Cuban government takes in controlling life in Cuba. The totalitarian regime controls all aspects of life in Cuba through pressure from the Communist Party. “The government continues to commit serious abuses, and denies citizens the right to change their government.” Cuban nationals are incarcerated for manifesting their political beliefs, and though the Cuban constitution provides for freedom of speech, all speech must conform to socialist thought. “The government does not tolerate dissent.” In 2006, harassment and intimidation of critics and dissidents increased. At least 67 “prisoners of conscience”—teachers, journalists, human rights defenders—are imprisoned throughout Cuba after unfair trials that do not meet international standards. All print and media are under control of the state. Internet access is severely limited.

Nor does governmental change appear to be imminent. According to a poll conducted in 2004 by the Institute for Public Opinion Research and Cuban Research Institute at Florida International University, 16% of Cuban-Americans polled felt that political change will never occur in Cuba. In light of the above-mentioned facts, the situation in Cuba does not war-

201 See Hearings, supra note 28, at 3 (statement of the Hon. George Ball).
202 Id. at 4.
203 See id.
204 See id.
205 Id.
206 See id.; Amnesty International Raps Cuba on Human Rights, EFE NEWS SERVICES, Jan. 29, 2007 [hereinafter Amnesty International] (according to Amnesty International, the government of Cuba continues to commit assorted abuses of human rights, such as the imprisonment of political dissidents and severe restrictions on the freedoms of expression, association, and assembly).
207 Bureau of Western Hemisphere Events, http://www.state.gov/r/pa/ei/bgn/.
208 See Amnesty International, supra note 206.
209 Id.
210 Id.
211 Id. (as of late January 2007, reports indicate that Cuba continues to fail international standards of human rights).
rant abolition of the CAA; rather, because Cubans in Cuba continue to face oppression by the Cuban government, the adjustment of status Congress has granted Cubans via the CAA is justified and upheld.\textsuperscript{213}

According to the 1966 Hearings, the only means to obtain a visa was if a Cuban who had arrived in the U.S. left the country and applied at an American consulate abroad.\textsuperscript{214} Since diplomatic ties with Cuba were severed on January 3, 1961, Cubans cannot apply for an immigration visa from within Cuba for the sole purpose of acquiring permanent residency in the U.S.\textsuperscript{215}

Today, immigration processing from within Cuba is possible, to a limited extent.\textsuperscript{216} “Immigration processing in Cuba is regulated by the September 4, 1994, Joint Communiqué between the U.S. government and the government of Cuba.”\textsuperscript{217} Currently, 20,000 visas are awarded to Cubans who fall within the following three groups: (1) family based; (2) refugee protection; and (3) discretionary parole under the Special Cuban Migration Program referred to as the Cuban Lottery.\textsuperscript{218} However, an additional procedure employed by the Cuban government complicates an already imperfect system. Cubans must obtain an exit visa before departing from Cuba.\textsuperscript{219} Over 500 applicants who were awarded an exit visa have not been allowed to exit Cuba.\textsuperscript{220} Further, Cuba has refused to initiate a new registration for the supposedly annual U.S. visa lottery.\textsuperscript{221} The last registration was held in 1998.\textsuperscript{222}

Efforts to correct the backlog have failed, and since 2003, when a meeting with the Cuban government was canceled because of its unwillingness to collaborate with the U.S., there have been little communications

\begin{footnotesize}
\begin{enumerate}
\item See Hearings, supra note 28, at 3 (the political oppression that led the Representatives present at the 1966 Congressional Hearings presently remain in Cuba).
\item Id. Cuban Refugees Seek New Status, N.Y. TIMES, Nov. 15, 1966, at 15.
\item See Hearings, supra note 28, at 8.
\item Id.
\item See id.
\item See Oscar Corral, U.S. Says Cuba Not Trying To Halt Migrants, MIAMI HERALD, Sept. 29, 2005, at 1A [hereinafter U.S. Says Cuba]: Andres Viglucci, Costly Exit Fees Keep Some Cubans From Using Visas, MIAMI HERALD, Aug. 9, 1998, at 1A. By 1998, 5,700 of the 42,000 Cubans granted a U.S. immigration visa had not reached the U.S due to high exit fees. Id. The fees, $500 for adult and $400 for children to be paid in U.S. currency only, are coupled with air travel to the U.S. and mandatory medical exams. Id. “In some cases, the visas, which are good for six months and renewable for six months, expire and recipients must reapply.” Id. Some must give up their dream of reaching the U.S. for lack of money. Id. “There are other impediments as well. In a relatively small number of cases, mainly involving young men of military service age and relatives of high level defectors, the Cuban government refuses exit visas.” Id.
\item See U.S. Says Cuba, supra note 219, at 1A.
\item See id.
\item See id.
\end{enumerate}
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between the two sides with regards to immigration issues. In light of Cuba’s non-cooperation, specifically with the U.S. visa lottery, there is no reasonable method by which a Cuban in Cuba may apply for a visa to enter the U.S. or a Cuban visa to exit Cuba. The CAA should remain intact as Cubans are continually forced to risk their lives at sea in order to reach the U.S.

According to the 1966 Hearings, an adverse result of preventing Cubans from receiving permanent residence in the U.S. is that “skilled and professionally trained individuals who would be a credit to this country are prevented from obtaining gainful employment [in the U.S.], either because of conditions imposed independently by employers, or because of restrictive statutes. Enactment of [the CAA] . . . removes many bars to the self-sufficiency of Cuban refugees.”

Today, many Cuban professionals who would be a credit to American society are being prevented from gaining access to the United States. For example, 171 of the estimated 500 Cubans who have been awarded a U.S. visa, but have not been allowed to exit Cuba, are doctors. Cuban doctors, who wish to leave Cuba for the same reasons non-professionals immigrate, customarily defected while in a third country; however, this has been difficult to accomplish. Professionals who perform their trained skills in third countries are often considered to live in that country, and thus are no longer escaping the oppression at the hands of the Cuban government. An estimated 500 medical personnel have recently defected. The above mentioned facts taken into consideration, Cuban professionals who would be an asset to American society are being prevented from gaining access to the U.S. In an effort to facilitate the admission of these individuals, U.S. policy “announced in August [2006], enables Cuban medical personnel working abroad to come to the United States once they passed routine background checks.”

223 See id.
224 See supra notes 165-172 and accompanying text.
225 See Hearings, supra note 28, at 3. Cubans in 1966 could not apply for a U.S. visa from within Cuba. Id. Cubans in 2006 are not being granted the U.S. visas they are entitled to under the Joint Communique. Id.
226 Id. at 9 (statement of the Hon. Emanuel Celler).
227 See U.S. Says Cuba, supra note 219, at 1A.
228 See Alfonso Chardy, U.S. Tweaks Cuba Policy, MIAMI HERALD, Aug. 12, 2006, at 1B [hereinafter U.S. Tweaks].
229 See id.
230 See id.
231 See Asylum Bid Stalls For 38 Cuban Doctors, Chi. Trib., Feb. 3, 2007, at 9. Thirty-eight Cuban doctors have defected from a mission in Venezuela, and await refugee status in Venezuela. Id. They hope to seek asylum in the U.S., but have been waiting a Venezuelan response for 6 months. Id.
232 Id.; Vanessa Bauza, Cuban Troupe Defects in Vegas: 44 Performers of Music Group Seek Asylum in the U.S., S. FLA. SUN-SENTINEL, Nov. 16, 2004, at 1A. Forty-four performers of the Havana Night Club show took place in large mass defection from Cuba. Id. They feared group disbandment
these individuals to remain in the U.S., the CAA should continue to ensure at least one avenue that provides professionals such as doctors, nurses, and other needed medical personnel to stay in the U.S.  

According to the 1966 Hearings, the efforts taken by the U.S. to welcome the Cuban immigrants are “humanitarian gestures,” and in no way indicate a change in political posture toward Cuba. In other words, the CAA in no way is indicative of a direct agreement with the Cuban government; rather, it is a form of relief to the Cuban people. The essence of the American posture toward Cuba is that Cuba one day will return again to the “free world family of nations,” while the gates to the U.S. remain open to those who wish to flee the oppression of the totalitarian government.

Today, the American stance on Cuba has not changed since the inception of the CAA in 1966. Cuba and the U.S. continue to have no diplomatic relations, and the U.S. embargo continues to restrict trade with Cuban industries. Earlier this year, concern over Cuba grew once again as the nation wondered—or at least South Florida and other Cuban enclaves—whether the death of Fidel Castro and the transfer of power to his brother, Raul Castro, would cause diplomatic change on the island. According to Thomas Shannon, Assistant Secretary of Western Hemisphere Affairs, “[i]t is our view that Cuba’s future has to be determined by the Cuban people. That ultimately no political solution can be imposed from the outside, neither from the United States, nor any other country . . . . [I]t’s imperative that the Cuban people be able to choose their future.”

Secretary of State Condoleezza Rice also spoke to the Cuban people as the death of Fidel Castro appeared imminent.

Much is changing [in Cuba], yet one thing remains constant: America’s commitment to supporting a future of freedom for Cuba, a future that will be defined by you—the Cuban people.

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233 See Hearings, supra note 28, at 9 (Congressional interest in granted adjustment of status via the CAA to Cuban professionals).
234 See id.
235 Id.
236 Id.
237 See Pierre M. Atlas, U.S. Must Change Policies That Harm Haitians, Cubans, INDIANAPOLIS STAR, Oct. 6, 2005, at A12 [hereinafter U.S. Must Change]. During the Cold War, Cuba and the Soviet Union marched side-by-side. Id. “Thanks to the 40-year old trade embargo and especially the demise of the Soviet economic subsidies, Cuba is no longer a threat.” Id. However, though the rationales for the embargo are no longer convincing, trade with Cuba remains restricted. Id.
238 See Bachelet & Robles, supra note 198, at 1A.
239 See U.S. Must Change, supra note 237, at A12.
241 Id. (alteration in original).
. . . [W]e will stand with you to secure your rights.

. . . [A]nd we stand ready to provide you with humanitarian assistance, as you begin to chart a new course for your country.

. . .

It has long been the hope of the United States that a free, independent, and democratic Cuba would be more than just a close neighbor—it would be a close friend. This is our goal, now more than ever, and throughout this time of change, all of you must know that you have no greater friend than the United States of America.

As evidenced by the statements of Assistant Secretary Thomas Shannon and Secretary of State Condoleezza Rice in conjunction with the continuation of restrictive and limiting U.S. policies toward Cuba such as the embargo, the furthering of humanitarian aid to Cuban immigrants via the CAA in no way changes the U.S. government’s stance against the totalitarian regime.

According to the 1966 Hearings, Cubans do not intend to reside permanently in the United States. Once conditions improve in Cuba, the immigrants will return to their homes abroad.

Today, a poll conducted in 2004 by the Institute for Public Opinion Research and Cuban Research Institute at Florida International University indicates that 46.2% of Cubans polled are not at all likely to return to Cuba if the Cuban government shifts from a totalitarian to a democratic form.

It should come as no surprise that the population of Cubans in the U.S. has increased since the establishment of the CAA. In 1980, nearly 570,000 Cubans called Miami, Florida, their home. The U.S. Census Bureau’s 2000 census indicates that over 833,000 Cubans live in Florida. “Members of the first generation that fled Cuba after Fidel Castro came to power were always sustained by the dream of one day seeing their homeland free of its Communist government. But in time . . . [t]hey remade themselves

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243 See generally, Hearings, supra note 28, at 17-18 (accepting Cuban immigrants in 1966 as a humanitarian gesture does not change the overall outlook of the U.S government toward Cuba).

244 See id. at 18; Cuban Refugees Seek Asylum, N.Y. TIMES, Nov. 15, 1966, at 15 (the thousands of Cubans that filled immigration offices in 1966, just after enactment of the CAA, did not all intend to stay in the U.S. permanently. “They were more interested in the immediate benefits of becoming permanent residents than in seeking citizenship after five years of residency.” Some did not intend to give up their Cuban citizenship, hoping to return home someday).

245 See id.

246 See The Cuba Poll, supra note 212.

247 See Transformation, supra note 87, at 20.

248 U.S. Census Bureau, Census 2000 Demographic Profile Highlights, Selected Population Group: Cuban.

249 See supra note 195 and accompanying text (describing the hope many Cubans retain of one day returning to Cuba).
and [the cities they live in].” Over time, the Cuban immigrants have settled in the U.S. and have realized that they and their children cannot pack up and leave the U.S. for a country they either left decades ago or have never known. The reality for many Cuban immigrants “is that home is here now.” It has become evident that Cubans who arrive in the U.S. and adjust their immigration status through the CAA are not contemplating a temporary stay in the U.S.

According to the 1966 Hearings, Cuban immigrants prefer to settle in the U.S., “particularly the Miami area and Florida.” Americans and Cubans know one another through tourist excursions and business experiences. Cubans have visited the Miami area and other parts of the U.S. on holidays, and “know this part of the world.” “[Cubans] know how to live with Americans.” Additionally, Central and South Americans have less in common with Cubans than do Americans. The Spanish that is spoken in some Latin American countries is different from that spoken in Cuba, and we must not underestimate the diversity between Latin America and Cuba.

Today, Argentina shares a close relationship with the people of Cuba because of the honored and beloved icon Ernesto “Che” Guevara. Bolivia is another ally of Cuba in South America. Arguably, Cuba has no

251 See Bill Steigerwald, What’s Next For Cuba After Castro?, THE JERSEY JOURNAL, Aug. 14, 2006, at A17 (“You’re not talking about exiles who arrived a year ago. You’re talking about thousands of people who came in more than 40 years ago. They married here. They have children. Their children married here. There are folks who have spent two generations in the United States. They are elected to Congress, they pay taxes, they serve in the armed forces. I’m sure that some Cuban-Americans will go back to stay in Cuba and many others will go back to visit. But I think a large percentage of Cubans now living in the United States after Castro is gone are going to discover that they see themselves more like Irish-Americans in Boston or American Jews in New York or German-Americans in the Pittsburgh area.”) (statement of Frank Calzon, executive director of the Center for a Free Cuba—an independent, non-partisan institution dedicated to promoting human rights and a transition to democracy and the rule of law on the island of Cuba).
252 See Tug of Two Homes, supra note 250.
253 See Hearings, supra note 28, at 18.
254 Id. at 24; Kevin Manahan, Away From Big Game, Boos for Castro, STAR-LEDGER, Feb. 5, 2007, at 1 (“Miami is home to more than a million Cuban-Americans, and last week a citizens’ committee announced plans to celebrate Castro’s death with a party at the Orange Bowl. Let your spite be your invitation.”).
256 Id.
257 Id.
258 See id. at 25.
259 See id. at 24.
261 See id.
greater ally than Venezuela. Cuba, as part of an agreement with Venezuela, sends doctors, teachers, and sports instructors to Venezuela in return for over 50,000 barrels of oil per day. More recently, Cuba and Venezuela agreed with Bolivia to buy all of Bolivia’s soy beans in exchange for access to Bolivian oil. Additionally, Cuba remains a powerful ally of Mexico, while the U.S. continues its non-diplomatic relationship with Cuba. Cubans who wish to find refuge from the oppressive Castro government do have alternatives in Central and South America. The comfort level of Cubans in these countries is high, as is the opportunity of sustaining a life of quality. Bolivia, Mexico, Argentina, and Venezuela are Spanish-speaking countries with ties to Cuba and large metropolitan centers. While Cubans may prefer to immigrate to the U.S., the historical relationship that once existed between Cuba and the U.S. is no more, and Cuba and the previously mentioned Central and South American countries are now closely tied together.

The above-mentioned hypothetical responses to the concerns from the 1966 Hearings are similar for the most part to those given in 1966. Cubans remain oppressed; the formal process for receiving access to the United States is inadequate; professionals are being prevented access to the United States; and the American stance on Cuba has not changed. However, at least two of the rationales for passing the CAA no longer carry the same weight. Exiled Cubans in the U.S. do not ultimately intend to return to Cuba; and, arguably, Cubans prefer to live in South and Central America.

262 See Magdalena Morales, Chávez Cultivating Cuban Idea, SEATTLE TIMES, Apr. 22, 2003, at A17 (Cuban instructors have offered farming lessons to Venezuelans as part of “Cuba’s latest export to its closest South American ally, Venezuela.” The farming lessons have been criticized as “little more than a political gimmick and another sign of Chávez’s close ideological ties with his friend and ally Cuban President Fidel Castro.”).
266 See Pablo Bachelet & Frances Robles, Cuba Cuts Power to U.S. Mission, MIAMI HERALD, Jun. 13, 2006, at 1A.
267 See supra notes 210-216 and accompanying text.
268 See Rodrigo Lazo, Promise of Help Still Good, Cubans in Venezuela are Told, MIAMI HERALD, June 16, 1989, at 4B (Cubans have settled in Venezuela, Panama, Costa Rica, and Spain. Many see their time in these countries as temporary stops on their voyage to the U.S.; however, the possibility for prosperity outside of the U.S. for Cubans exists).
269 See supra notes 210-18 and accompanying text.
270 See supra notes 210-19 and accompanying text.
271 See supra notes 152-64 and accompanying text.
272 See supra notes 165-76 and accompanying text.
273 See supra notes 177-87 and accompanying text.
274 See supra notes 188-94 and accompanying text.
275 See supra notes 195-203 and accompanying text.
The majority of the rationales support the continued use of the CAA, but with a minority of rationales no longer supporting the CAA, the debate over the continued use of the CAA has grown.

IV. COMMENTARY - THE FUTURE OF THE CAA

A. Continued Preferential Treatment of Cubans

One man felt so passionate about the current state of U.S.-Cuba relations, or the lack thereof, that in January 2006, after 15 Cuban refugees were sent back to Cuba, he went on an eleven-day hunger strike. It ended only after President Bush agreed to meet with Cuban exile leaders to discuss Cuban immigration policies. This event—to some—exemplifies America’s stance on the fair treatment of immigrants; however, [the U.S.] is very concerned about fair immigration practices only when it comes to the Cuban exile community. For it has been many years that Haitian refugees have been neglected and even mistreated by U.S. immigration policy.

Over forty years after the CAA became law, preferential treatment of the kind solely demonstrated toward Cuban immigrants may no longer be a reasonable practice of American immigration policies.

At least one possible future for Cuba is consistent with the concerns voiced during the 1966 Congressional Hearings. Raul Castro’s takeover of Cuba likely will be reminiscent of Communist China as indicated by a number of trips he has made to China since 2003 to study Chinese economic polices. This likely opens Cuba to some economic change, but also supplies the government with a “more forceful hand in denying human

276 See supra notes 204-20 and accompanying text.
277 See Id.
278 See id.
279 Id. (alteration in original).
280 See Maura Possley, Cuban Policy Sparks Cries of Inequity – Critics Seek Fairness in Controversy Over ‘Wet Foot, Dry Foot’, BRADENTON HERALD, Dec. 20, 2006, at 1A (the disparity created by pro-Cuban policies “points to a desperate need for equity in U.S. immigration laws.” Most immigrants who attempt to reach the U.S. face similar strife, but only Cubans receive the special treatment. The critics are not anti-Cuban or anti-immigration; rather, they seek fair policies toward all immigrants. On the other hand, some view the critics, especially those Latino or Hispanic critics, as traitors, but no other country in the world receives this treatment from U.S. immigration. It appears to not follow any logic. Immigrants are jealous of the sensitive favoritism. It just doesn’t make sense to choose between groups of immigrants when all these groups are assemblies of persons suffering from similar strife).
281 See supra notes 152-220 (referring to the concerns from 1966 and the modern day responses of 2006-2007).
The standard of living for the average Cuban remains lower today compared to life in Cuba prior to 1990, when Cuba’s paternalistic ally, the Soviet Union, collapsed. As a result of the Soviet Union’s collapse, about $6 billion were lost annually. Cubans have been left with so few options that many hunt and eat the cats off the street. Further, the deficiencies in nutrition have caused an epidemic of optic neuropathy, resulting in temporary blindness.

Strife in Cuba is in part due to U.S. policies, i.e., the embargo. Economic sanctions and the embargo against Cuba perhaps create a duty to accept Cuban refugees who flee Cuba due to economic decline. The U.S. has consistently strengthened sanctions against the Cuban government as a means of accelerating democracy on the island. As recently as November 2006, U.S. prosecutors announced the creation of a task force that will increasingly prosecute the import/export of goods to and from Cuba, unapproved visits to Cuba, and exchanges of hard currency to and from Cuba.

Cuba has lost an estimated $4 billion in 2006 due to lost business, cancelled contracts, and higher shipping and financial costs. Nearly every U.N. member nation currently opposes the U.S. embargo on Cuba, but the Bush Administration continues to tighten enforcement of the nearly 45-year old economic blockade. Clearly, there is a negative history between Cuba and the U.S. Perhaps the continued preferential treatment of Cubans today is a form of compensation for past mistakes.

283 Id.
284 Id.
285 See id.
287 See id.
288 See Flight, supra note 17; Amnesty International Raps Cuba on Human Rights, EFE NEWS SERVICES, Jan. 29, 2007 (Amnesty International has called for an end to the economic embargo on Cuba. The embargo has been detrimental to Cubans’ enjoyment of economic and social rights such as food, health, and sanitation. It has hampered family reunification. The embargo’s negative impact on Cuba coincides with Cuba’s violation of human rights.).
292 See id. at 4.
294 See supra notes 231-36 and accompanying text.
295 See supra notes 188, 231 and accompanying text (describing the strife caused by the embargo).
The special treatment possibly continues because Cubans in the U.S. have found various ways to become prominent and self-sustainable. The presence of well-known Cuban-American individuals is a sign of the ability of Cubans to assimilate, adjust, and influence the American way of life. The same argument, however, can be made for various other immigrant groups who do not receive the same immigration treatment or positive attention from the American public or government.

For example, Haiti, like Cuba, is known for its “politically-tumultuous history and . . . abject poverty.” Many Haitians made the 700 mile sea voyage to Miami, FL in the 1960s to “escape the torture and killings perpetrated by François ‘Papa Doc’ Duvalier and his Tonton Macoutes thugs. When the dictator died in 1971, his son, Jean-Claude ‘Baby Doc’ Duvalier, continued the terror, and the exodus burgeoned.” In 1980, about 25,000 Haitians arrived in South Florida along with 125,000 Cubans during the 1980 Mariel boatlift; however, “because of the 1966 Cuban [Adjustment] Act . . . the Cubans were allowed to stay while most Haitians were sent back.”

Like Cubans, the Haitians’ only means to reach freedom is via the high seas. More than one million Haitians live in the U.S. Over one third live in New York’s metro areas. An estimated 20,000 Haitians are living illegally in the U.S. In 1992, an estimated 37,000 Haitians attempted to reach the U.S. by boat after a military coup drove Haiti’s first freely elected

296 See http://en.wikipedia.org/wiki/Cuban_American; supra note 177 and accompanying text (the subcommittee during the 1966 hearings voiced an interest in procuring the self-sustainability of the Cuban people).

297 No Foot, at 437; Bill Bishop, Eugene Native Sees Haitian Strife Up Close, REGISTER-GUARD, Feb. 17, 2004, at 1D (“[V]iolence spreads in the streets of Haitian cities . . . over the political upheaval that is claiming scores of lives.” The poor nation is in battle with itself. “The conflict is hardly new to Haitians, who have had 32 coups in their 200-year history.” Haitians have no jobs, money, food, or hope for the future. They can’t agree on a solution, but they wish for the violence to stop. Haitians know that no matter what policies are created or enforced, more people will die); Jacqueline Charles, Congress is Asked to Let Haitians Stay, MIAMI HERALD, Jan. 19, 2007, at 10A (hereinafter, Let Haitians Stay) (“[S]chools in Port-au-Prince were forced to close days early following a spike in for-ransom kidnappings of Haitian kids. At least 48 such kidnappings were reported Nov. 10-Dec. 15.”); Micheal Delbert, For U.S. Haitians, Home is Both Near and Far, INTER PRESS SERVICE, Nov. 21, 2006 (hereinafter U.S. Haitians) (“Some 80 percent of the country’s population lives in poverty, and Haiti’s rate of hunger is ranked as the world’s third highest, surpassed by only Somalia and Afghanistan. Two-thirds of the labor force has no formal jobs. Deforestation has resulted in 90 percent of Haiti’s tree cover being destroyed for charcoal and to make room for farming in the past 50 years, leaving little to hold topsoil when the Caribbean rains fall.”).


299 Id.

300 See No Foot, supra note 16, at 437.

301 See U.S. Haitians, supra note 312.

302 Id.

303 Let Haitians Stay, supra note 312.
president, Jean-Bertrand Aristide, into exile. However, “Cuba is the only one that has an agreement with the United States regarding the rights of its citizens to ask for political asylum. The Haitians have no such agreement and have become disillusioned with what they perceive is a double standard on the part of the United States.”

Similar to U.S.-Cuban relations, it has been said that the U.S. is responsible for the economic and political predicament in Haiti.

Today, “Haitians are the only refugees that are intercepted in the waters and returned to their country.” Further, those that do reach U.S. soil have not been subject to the same fate as Cubans.

On October 29, 2002, over two hundred Haitian emigrants successfully reached American soil; many scrambled in desperation through bumper-to-bumper traffic on the Rickenbacker Causeway in Miami, in an effort to elude authorities. Unfortunately touching American soil for Haitians means nothing, unless they evade authorities and seek refuge with family, friends, and/or human right organizations.

In April 2006, “a fishing boat with 43 Haitians, one Jamaican and one Cuban made its way to land at Hillsboro Beach, [Florida]. The Haitians and Jamaican will more than likely be sent back to their countries, while the Cuban is almost sure to stay.”

More recently, on March 28, 2007, over 100 Haitian refugees boarded a 40-foot sailboat to escape the situation in Haiti. “Bewildered family members [already in the U.S.] watched as the government has warehoused their loved ones in secrecy, behind barbed wire in Pompano Beach, [Florida] and sent them back to Haiti one by one. Pray-

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305 No Foot, supra note 16, at 438; Let Haitians Stay, at 10A (U.S. Rep. Alcee Hastings currently leads an effort to extend “temporary protected status” to Haitians living illegally in the U.S. “[t]hat would give them residence and work papers for up to 18 months.” Congress can pass legislation that designates temporary protected status to a group of immigrants, but it generally defers to the Department of Homeland Security. According to the U.S. Citizenship and Immigration Services, temporary protected status has only been extended once—El Salvador); Trenton Daniel, Haitians Protest U.S. Policy After 43 on Boat are Detained, MIAMI HERALD, Apr. 11, 2006, at 1B (hereinafter 43 on Boat ) (Haitians should be granted temporary protected status not only because of the great political upheaval, but also because they have suffered natural disasters).
306 See No Foot, supra note 16, at 446; Let Haitians Stay, at 10A (Haitian government has “blamed a surge in violence and kidnappings following the 2004 ouster of former Haitian President Jean-Bertrand Aristide on the U.S. government’s long-standing deportation policy.”).
307 No Foot, supra note 16, at 449.
308 Id. at 456.
310 Id.
311 Washed Up, supra note 313.
ers to God and voodoo spirits haven’t saved them. Nor have immigration lawyers.”

President Ronald W. Reagan, on September 29, 1981, proclaimed that, “the ongoing migration of persons to the United States in violation of our laws is a serious national problem detrimental to the interests of the United States.”

Today, with the immigration anomaly created by the Wet Foot, Dry Foot Policy, Cubans and Haitians are often involved in confrontations with the U.S. Coast Guard, but only the Cubans get to stay in the U.S.

“For many Haitian-Americans, the United States’ preferential treatment of Cuban immigrants has gone too far.” Additionally, Haitians who do make it to the U.S. and evade authorities face a low percentage opportunity at gaining asylum.

Over 21,000 Haitians applied for political asylum between the years 1997-2002, but only about 1,200 were approved. In fact, more than 80 percent of asylum seekers from Haiti have been denied asylum since 2000. According to one report, one immigration judge in the Miami area “denied 97.6 percent of Haitian cases . . . between 2000 and 2005.”

B. The Proposal for the Future

The Cuban Adjustment Act of 1966 has kept the doors to the U.S. open for Cubans for forty years. It has been lenient at times; it has been restricted at times, but it has always provided a means to freedom for the Cuban people. A more stringent policy would deprive the U.S. of a most valuable resource—eager individuals who are prepared and willing to contribute to the American economy, culture, and society. However, for 40 years, the preferential treatment and the lack of attention to other groups has deprived this country of such influential persons. “We are asking the U.S. government to give the Haitians the same rights that they afford the refugees of other nations,” said Marleine Bastien, director of the Haitian Women of Miami.

“We are asking that all . . . refugees be given [fair] interviews.” This country has in a way screened out certain refugees, specifically Hai-

312 Id.
313 No Foot, supra note 16, at 451.
314 See supra notes 19-20 and accompanying text.
315 No Foot, supra note 16, at 454.
316 See id. at 456
317 See id.
319 Washed Up, supra note 313 at 19.
320 See Haitians Protest, supra note 324.
321 See 43 on Boat, supra 320.
tians, who are in dire need of the aid that has been provided to Cubans for over four decades.\textsuperscript{322}

Precedent supports a more lenient and broad immigration policy that does not distinguish between a refugee’s nationality.\textsuperscript{323} In \textit{Matthew v. Diaz}, the Supreme Court of the United States distinguished between American citizens and aliens, as well as the constitutional protections that apply to these groups.\textsuperscript{324} While the Court recognized that all aliens do not need to be treated homogeneously, the main issue of the case was “whether statutory discrimination within the class of aliens . . . is permissible.”\textsuperscript{325} Further, the Court’s rationale focused on the nature of the requirement Congress places on aliens, i.e., whether the requirement is wholly irrational.\textsuperscript{326} Courts have later interpreted “wholly irrational” to mean a rational basis scrutiny.\textsuperscript{327} “If there is a rational relationship between the disparity of treatment and some legitimate governmental purpose,” the legislation should be upheld.\textsuperscript{328} Thus, Congress must only be rationale in its discrimination amongst aliens.\textsuperscript{329} But, what if Congress, in discriminating between Cubans and all other refugee groups, has been irrational, and after forty years, can no longer express a legitimate governmental purpose? What if the continued use of the CAA is justifiable, i.e., the government could continue to express a legitimate purpose for allowing Cubans to enter the U.S., but discriminating between Cubans and other refugees, specifically Haitians, is wholly irrational?\textsuperscript{330}

It should be noted that the Supreme Court views the admission of aliens as the subject which Congress has the most complete power to legislate.\textsuperscript{331} The Court has long viewed Congress’ “power to expel or exclude aliens as a fundamental sovereign attribute exercised by the Government’s political departments largely immune from judicial control.”\textsuperscript{332} Further, “although few, if any, countries have been as generous as the United States in extending the privilege to immigrate, or in providing sanctuary to the

\begin{itemize}
\item \textsuperscript{322} See id. (“The stark differences in immigration policy came into the spotlight again.” Protests over this issues are not new).
\item \textsuperscript{323} See \textit{Matthew v. Diaz}, 426 U.S. 67 (1976).
\item \textsuperscript{324} See id.
\item \textsuperscript{325} See id. at 78, 80.
\item \textsuperscript{326} See id. at 82-83.
\item \textsuperscript{327} See \textit{Rodriguez v. U.S.}, 169 F.3d 1342 (11th Cir. 1999).
\item \textsuperscript{328} See id. at 1342.
\item \textsuperscript{329} See \textit{No Foot}, supra note 16, at 461.
\item \textsuperscript{330} Id.; see supra note 149-220 and accompanying text. In Section III of this comment, I anticipated how a representative of the 2006 House of Congress would respond to the concerns of the 1996 House Committee that debated the CAA. My goal for that portion of the comment was to justify the CAA in its fortieth year.
\item \textsuperscript{331} \textit{Fiallo v. Bell}, 430 U.S. 787, 792 (1977) (the Supreme Court of the United States has held that decisions to exclude aliens are the exclusive province of Congress); \textit{Chae Chan Ping v. U.S.}, 130 U.S. 581 (1889) (The Chinese Exclusion Case).
\item \textsuperscript{332} \textit{Shaughnessy v. Mezei}, 345 U.S. 206, 210 (1953).
\end{itemize}
oppressed, limits and classifications as to who shall be admitted are traditional and necessary elements of legislation in this area." Congress has, however, provided some—not all—refugees with aid, and the Court has respectfully allowed Congress to make distinctions. The Court has even acknowledged that, "[w]ith respect to each of these legislative policy distinctions, it could be argued that the line should have been drawn at a different point and that the statutory definitions deny preferential status," to others who deserve it. Thus, the issue of extending the use of the CAA to, at a minimum, all refugees who arrive to the U.S. by sea is possible according to the Supreme Court. It requires a shifting of the line drawing. However, it is not within the jurisdiction of the Court; rather, it requires an additional act of Congress.

Congress, over the past forty years, has approved of the CAA and its preferential treatment of Cubans. Inadvertently, it has denied others access to the U.S. If Congress were to allow, for example, Haitians to enter the U.S. in the same fashion as Cubans, neither group would acquire an automatic right to permanently reside in the U.S. In other words, the debate over the CAA arises because of the access granted to Cubans above all other refugees, not an actual grant of status. Immigrant groups seek an equitable opportunity to apply for status in the U.S.

C. Equal Treatment of Cubans and Haitians

Cubans and Haitians belong in the same immigration class. Though Haiti has received less attention than Cuba, the interests of Haitians and pro-Haitian activists sound a lot like those expressed by Cubans. According to former President Clinton, the United States has a "significant interest in Haiti." The most obvious and important reason for this interest is Haiti’s

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333 Fiallo, 430 U.S. at 798.
334 See id.
335 Id.
336 See id.
337 See id.
338 See supra note 270-76 and accompanying text.
340 See supra note 19-20 (anecdote describing how the CAA affects refugees from Cuba different from refugees of all other nations).
341 See 8 U.S.C. § 1255 (text of the Cuban Adjustment Act) ("May be adjusted by the Attorney General, in his discretion and under such regulations as he may prescribe." This language indicates that Cubans are granted an opportunity to receive permanent residents unparalleled to any other group, but they must still comply with all other immigration regulations, and "may" not be adjusted if the Attorney General deems it proper).
342 See supra note 26 and accompanying text (explaining that the author of this comment does not intend to criticize Cubans or pro-Cuban attitudes; rather intends to open and extend the privileges to persons who also deserve, and perhaps need special privileges more than Cubans).
343 Christopher Marquis and Robert A. Rankin, Clinton Lists 6 Reasons Why U.S. Might Use Force in Haiti, MIAMI HERALD, May, 20, 1994, at 1A.
geographic location. Further, the United States is interested in the establishment of order in Haiti. In part, this interest stems from a history of failed intervention in Haiti and the effect of U.S. policy toward Haiti.

A refugee from Cuba and Haiti who takes to the sea in attempting to reach the U.S. faces many of the same hurdles: (1) the reality of leaving their homeland and loved ones indefinitely; (2) the sea; (3) avoiding the U.S. Coast Guard and being subject to the Wet Foot, Dry Foot policy; (4) access to immigration relief; and (5) a favorable grant of relief from U.S. immigration services. This general timeline of what a refugee faces does not begin to account for the realities a seafaring rafter faces, but it can be used to highlight the procedures Cubans face versus all other refugees.

In terms of the Haitians’ access to immigration relief, only Cubans have an automatic right to apply for adjustment of status. If a Cuban does not meet the requirements set out by the CAA or is otherwise found to be inadmissible he/she may not adjust under the CAA. But, generally speaking, a Haitian and a Cuban who face the same persecution in their native country, face the same dangers at sea, and seek the same life in the U.S., do not receive the same attention under U.S. immigration laws. Simply being Cuban gives rise to a claim for adjustment of status, but being Haitian does not.

Specifically, on the Department of Homeland Security application for adjustment of status, section (e) and (f) of Part 2 of the application reads as follows:

(e) I am a native or citizen of Cuba admitted or paroled in the United States after January 1, 1959, and thereafter have been physically present in the United States for at least one year;

(f) I am the husband, wife or minor unmarried child of a Cuban described above in (e) and I am residing with that person, and was admitted or paroled in the United States after January 1, 1959, and the-
reafter have been physically present in the United States for at least one year.\footnote{Form I-485, Application to Register Permanent Residence or Adjust Status, http://www.uscis.gov/files/form/i-485.pdf.}

The application for adjustment of status does not expressly mention any other group aside from Cubans.\footnote{See id.}

What would the Act look like if it served a wholly rational purpose and a legitimate governmental purpose?

D. The Cuban/Haitian Adjustment Act of 2007 ("CHAA")

[T]he status of any alien [who is a native or citizen of Cuba and] who is a native or citizen of Cuba or Haiti or any other country that the Attorney General recognizes and who has been inspected and admitted or paroled into the United States [subsequent to January 1, 1959] subsequent to January 1, 2007 and has been physically present in the United States for at least one year, may be adjusted by the Attorney General, in his discretion and under such regulations as he may prescribe, to that of an alien lawfully admitted for permanent residence if the alien makes an application for such adjustment, and the alien is eligible to receive an immigrant visa and is admissible to the United States for permanent residence . . . . The provisions of this Act . . . shall be applicable to the spouse and child of any alien described in this subsection, regardless of their citizenship and place of birth, who are residing with such alien in the United States . . . .\footnote{8 U.S.C. § 1255 (alterations in original) (citations omitted) (emphasis added).}

The CHAA is not an extension of the CAA, though it may appear like one. Rather, it is a fairer and less preferential version of the CAA. After all, Haitians over the past forty years have been subject to far less special treatment by U.S. immigration, yet have faced an almost identical persecution and oppression to that of Cubans.\footnote{See supra note 231 and accompanying text.} In turning to the six concerns from the 1966 Congressional Hearings—with a few modifications and revisions—Haiti appropriately and justifiably fits within the grand scheme of the CAA.\footnote{See supra notes 149-220 and accompanying text (borrowing from the language and themes of the 1966 Hearings to create a hypothetical set of concerns and responses geared toward Haiti forty years after enactment of the CAA).}
E. Hypothetical Congressional Hearings on Haitian Affairs and Immigration Policy

According to the 1966 Hearings, the Act was passed in order to improve the plight of Haitians. These refugees left their home country because of the oppression of their government.\textsuperscript{357} Today, Haitian farmers have resorted to eating the seeds that would have produced the next harvest of crops.\textsuperscript{359} Few hospitals and health clinics are functional, and those that are, have been filled with malnourished children.\textsuperscript{360} Haiti is a country of endemic, political violence and a stinging poverty.\textsuperscript{361} Nearly 23,000 Haitians sought to reach the U.S. in the 1980s.\textsuperscript{362} Today, the “majority of the population . . . teeters on the brink of death from hunger, disease, and displacement . . . [and nationals] of Haiti are subject to forced repatriation into a country where the government cannot prevent immediate threats to their lives, freedom, and welfare.”\textsuperscript{363} Therefore, because both Haitians and Cubans are subject to unstable and oppressive governmental and non-governmental regimes, the plight of both is lessened if admitted to the U.S. and given the opportunity to seek status.

According to the 1966 hearings, the formal process for achieving access to the United States from Haiti is inadequate.\textsuperscript{364} An individual from Haiti could not apply for an immigration visa to enter the U.S. from within Haiti.

Today, Haiti and the U.S. do have a diplomatic relationship; however, this does not ensure a fair visa application process within Haiti. Since 2003, natives of Haiti are not eligible for the Diversity Visa Lottery Program (“Program”).\textsuperscript{365} The Program gives individuals from certain countries—not Haiti—the opportunity to register and win a visa to seek permanent residency in the U.S.\textsuperscript{366} Due to the state of affairs in Haiti and the unavailability of visas, an opportunity to apply for adjustment of status should be granted to Haitians and Cubans.

\textsuperscript{357} See Hearings, supra note 28, at 3 (statement of the Hon. George Ball).
\textsuperscript{358} \textit{Id.}
\textsuperscript{360} See \textit{id}.
\textsuperscript{361} See \textit{id}.
\textsuperscript{362} See \textit{id}.
\textsuperscript{364} Support for the hypothetical claims and responses made in this section is derived from a study of the Congressional Hearings in 1966 that led to the enactment of the CAA, and a general understanding of past and current affairs regarding Haiti.
\textsuperscript{366} \textit{Id.}
According to the 1966 Hearings, professionals and skilled persons from Haiti are being denied access to the United States.\footnote{See Hearings, supra note 28, at 9.} These persons would be a great benefit to American society.\footnote{Id.}

Today, even with the lack of access to the U.S., Haitians have had a great influence on American society and culture. In 2006 elections, Kwame Raoul, a Democrat, was re-elected to the Illinois state Senate 13th District.\footnote{See Michael Deibert, For U.S. Haitians, Home is Both Near and Far, INTER PRESS SERVICE, Nov. 21, 2006.} M. Rony Francois heads the Florida Department of Health.\footnote{Id.} “The suburban Miami, [Florida] enclave of El Portal became, in 2000, the first municipality in the United States to elect a Haitian-American mayor, followed by North Miami and Spring Valley, N.Y.\footnote{Id.; see also Jonathan P. Hicks, Haitian Candidate Seeks to Add His Voice, N.Y. TIMES, Feb. 5, 2007, at 1 (Dr. Mathieu Eugene seeks to become the first Haitian member of the New York Council).} Haitian-Americans serve on city councils and municipal bodies throughout the country.”\footnote{Id.} Edwidge Danticat, author, has successfully written six novels and won various literary awards including being named one of New York Times Magazines “30 under 30” to watch.\footnote{See generally id.} Lylah M. Alphonse, journalist, is a news editor for the Boston Globe and is also author to a book. Garcelle Beauvais-Nilon, actress, has modeled for various cosmetic lines, but is best known for her role on N.Y.P.D. Blue. Wyclef Jean, musician/producer/humanitarian, has explored various entertainment roles while creating his own foundation, Yéle Haiti, to aid and rebuild Haiti. The list of Haitians that have impacted American society is not as long as the Cuban list, but this ties back to preferential treatment Cubans have received over the past forty years. Additionally, at least fourteen universities in Haiti are currently functional, indicating that there is a means to education and that the U.S. could benefit from allowing these professionals and skilled persons to adjust their immigration status.

According to the 1966 Hearings, the efforts taken by the U.S. to welcome immigrants are “humanitarian gestures,” and in no way indicate a change in political posture toward the oppressive governments.\footnote{See Hearings, supra note 28, at 17.} In other words, the CHAA is in no way indicative of any agreement with the foreign government; rather, it is a form of relief to the oppressed people.\footnote{See id.} The essence of the American posture toward the foreign country is that the foreign country one day return again to the “free world family of nations;”
while the U.S. government’s doors remain open to those who wish to flee the oppression from the totalitarian government.376

Today, the U.S. has remained involved to some degree in the transition to peace and democracy in Haiti. An arms embargo has been in place for a number of years in an effort to prevent violent militias from rising against the government.377 However, more recently, the U.S. government has lessened the embargo to support Haitian police that need aid in keeping order.378 Nevertheless, a U.S. policy that opens the gateway to America for Haitians who exit Haiti in search of freedom would in no way be indicative of a change in diplomatic stance. The U.S. would continue to support peace and economic prosperity in Haiti.

According to the 1966 Hearings, as the conditions improve in Haiti, immigrants will return to their home land.379 They do not intend to remain permanently in the United States.380

Today, this concern, similar with Cubans, is perhaps the least accurate. According to the 2000 U.S. Census, there were nearly 100,000 Haitians in Miami-Dade County, Florida, and nearly 550,000 Haitians in the United States.381 An estimated 360,000 Haitians living in the U.S. are foreign born.382 A Haitian and Cuban that leaves his/her home country likely never completely cuts ties with his/her homeland, but once a new life has begun in the U.S., once an immigrant accomplishes what he/she seeks after making the difficult voyage to the U.S., return to Haiti or Cuba is not likely.

According to the 1966 Hearings, immigrants prefer to settle in the U.S., “particularly the Miami area and Florida.”383 They know how to live with Americans,384 and have less in common with other regions of the world. Today, similar to Cubans, this rationale has also grown weaker. In November 2005, “[e]ighteen Haitian refugees who claim that they are fleeing political persecution and civil unrest in their homeland, landed in [Jamaica].”385 In October 2005, fifteen Haitians migrated to Jamaica in search of a better life, but Haitian immigration to Jamaica has remained small in comparison to the migration toward the U.S.

376 Id.
378 See generally id.
379 See id. at 18.
380 See id.
381 U.S. Census Bureau, Census 2000 Demographic Profile Highlights, Selected Population Group: Haitian.
382 Id.
383 Id. at 24.
384 Id.
The U.S. government has been determined to protect national security and public order through restricting borders and migration. Government officials like former Attorney General John Ashcroft have indicated that “Haitian restrictions are a matter of national security—that migrants from countries such as Pakistan have used Haiti as a staging point for entry into the United States.” However, Haiti is not on the U.S. Border Patrol’s list of nations considered to be “special interest” for hosting or supporting terrorism. More liberal immigration advocates criticize the U.S. government for covering up its real intentions, “[not] tolerat[ing] a large irregular movement of poor, black immigrants into a politically important state, Florida.” While immigration officials have not publicly admitted to race being a policy factor, Alex Stepick, director of the Immigration and Ethnicity Institute at Florida International University says, “[c]onsciously or unconsciously . . . the American policies on Haitians are driven by racism.” There is a perception, a misperception, that all Haitians are “pathetic” that hails from stereotyping of Haitians based on Haiti being the Western Hemisphere’s poorest nation. “If you come here from a communist country, it’s OK. If you come from a white country, it’s OK. If you come here from a black country, noncommunist, it’s not OK.”

The majority of the hypothetical rationales and responses support a Haitian act similar to the CAA granting access to Haitians similar to that given to Cubans. In recognition of the continued hardship faced by Haitians and Cubans, the level of assimilation exemplified by both, and the hypothetical modern Haitian responses to the concerns of the 1966 Hearings, the U.S. should open its doors to both Haitians and Cubans so that they may seek adjustment under the immigration laws of the U.S in an equal and justifiable manner.

V. CONCLUSION

What American principles does the U.S. government intend to project to the rest of the world? When dealing with Cubans, the 1966 Subcommittee considered and resolved this concern with the following response: We are a nation that encourages freedom and resistance to totalitarianism.
We are also a nation of consistency, one that “practices what it preaches;” those persons who are hard pressed under totalitarian regimes should be extended the possibility of becoming U.S. citizens, so long as they work toward the general good and freedom. So what is the rest of the world to make of the CAA and the preferential treatment of Cubans when denied to similarly situated groups like Haitians?

Cubans are “fine people and they come from good stock,” but so are many of the individuals who have been denied the opportunity to adjust their status within the U.S. Cubans have adjusted well to America, worked hard, and are no longer a financial burden to the U.S. government, but other groups would also be characterized as such if granted forty years of preferential treatment. The CAA set a precedent; the U.S. will open its doors to groups of individuals who, in the opinion of Congress, will benefit our society. This once was the “give-and-take” of the CAA. Cubans got access to the U.S., and the U.S., putting aside its violation of Article 33 of the Convention relating to the Status of Refugees and the principle of non-refoulement, looked good in the eyes of the international community. Cubans have made the U.S. look great, but forty years later, though Cubans continue to make an impact on American society, the number of individuals who have been denied the same rights are beginning to outnumber and cast a shadow over America’s “special favorites,”– Cubans. In other words, the benefit of accepting Cubans over all other groups is now outweighed by the number of other willing and worthy individuals who are as deserving as Cubans, but have been denied access to U.S.

The recent decline in the health of Fidel Castro has led many in Congress to question the future of Cuban migration. The big question tends to be, “are the Coast Guard and other Homeland Security agencies are prepared” for another mass migration? An estimated 500,000 Cubans could flee Cuba if, upon the death of Castro, more unrest breaks out. “Even an

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394 See id.
395 See id.
396 (to this day, there is no accurate figure for what Cubans have financially cost U.S. taxpayers. The following are some estimates of the costs undertaken after the Mariel Boatlift: (a) $1 billion on relocating and screening refugees; (b) $325 million allocated by the U.S. government to local governments to help with needs; (c) $60 million spent by the Immigration and Naturalization Service to detain refugees; (d) $29 million spent by the Department of Justice, per year, on Cuban programs. “South Floridian governments still claim they are owed $150 million from the federal bureaucracy for unreimbursed costs.”).
397 See Transformation, supra note 87, at 52.
398 See id. at 18-19.
400 Id. (alteration in original) (U.S. Rep. John Mica of Winter Park, Florida, a Republican on the House Transportation Committee, organized a closed-door meeting for discussion of this issue).
401 See id.
influx of 50,000 would be too much . . . straining schools, jobs, housing, social services and other resources.” 402 The list of potential drawbacks to any plan implemented to deal with a future influx is long; nevertheless, the drawbacks spring from the same root—the special treatment of Cubans. “U.S. policy allows Cubans who reach American soil to have automatic legal status.” 404 Those who favor tightening controls on immigration in this “already testy national debate” believe the special treatment of Cubans should change, 405 and that the CAA is “toast once Castro dies.” 406

Those who support the continued benefits of the CAA must act fast, before the “testy national debate” is inflamed by the next mass migration. Many of the concerns from 1966 remain true today and contemporary reasoning supports the continuation of the CAA. However, there is no good rationale for singling out Cubans over similarly situated persons such as Haitians. Cubans are not the only group risking their lives or living under oppressive governmental regimes.

The rationales from the 1966 Hearings that led to the enactment of the CAA are applicable to more than just one group. Extension of the CAA to Haitians does not create a slippery slope between the Cubans/Haitians and all other groups. The similarities between Cubans and Haitians mentioned throughout this comment indicate that Cubans and Haitians are inseparable for immigration purposes. Thus, adoption of the Cuban/Haitian Adjustment Act of 2007 (“CHAA”) grants access to persons who fall within the original intentions of the CAA and current hypothetical rationales, while eliminating the “preferential” from the exclusive treatment of Cubans. Haitians deserve the same attention as Cubans.

Other groups are deserving of immigration access to the U.S., but not necessarily via the proposed CHAA. The one principle that has no justification is the categorical separation of Cubans and Haitians as a result of the CAA. The CHAA, applying equally and evenly to a group of similarly situated non-citizens, rather than Cubans alone, eliminates the “preferential” from the treatment. The best method for preventing a mass exodus and controlling U.S. borders is some form of preventative political measure and compromise between diplomatic states, but at this stage in U.S.-Cuban and U.S.-Haitian relations, we can either hope that there will never be another

402 Id. (comment of Andy Gomez, assistant provost of the University of Miami and a scholar on Cuban issues).
403 Id.
404 Id. (referring to the affect caused by combining the CAA and the Wet Foot, Dry Foot Policy).
405 Id. (Mark Krikorian, head of the Center of Immigration Studies, said “Cuban migrants are now treated differently—in winning legal status if they land on U.S. soil—than people from other countries. That should change.”).
406 Id. (statement of Mark Krikorian).
407 Id. (referring to the nature of the debate, and the less than favorable outlook on another immigrant exodus).
immigration situation like Cuba or Haiti, or take a corrective approach that simultaneously corrects the special one-sided treatment of one group and balances the access to the U.S. by providing similarly situated persons, Cubans and Haitian, fair and equal access to the U.S.