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United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

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August 6, 2015

VIA ELECTRONIC TRANSMISSION

The Honorable Jeh Johnson
Secretary
U.S. Department of Homeland Security
Washington, D.C. 20528

The Honorable John Kerry
Secretary
U.S. Department of State
Washington, D.C. 20520

Dear Secretary Johnson and Secretary Kerry:

I write to you to express my concern about the Cuban government's continuing failure to cooperate with the United States in the repatriation of its nationals with final orders of removal and my disappointment that the Administration has failed to use the negotiations leading up to the re-establishment of diplomatic relations – effective July 20, 2015 – to address the issue of repatriation.¹

Cuba is perpetually on the U.S. Immigration and Customs Enforcement (ICE) list of recalcitrant countries because it refuses to take back people who are not identified by name in the repatriation agreement negotiated between the U.S. and Cuba in 1984. It is my understanding the 1984 agreement names only 2,746 people who Cuba will accept, of which approximately 2,000 have already been deported.² As a result of this policy, it is my further understanding that there are over 34,000 Cuban nationals, of which many are apparently convicted criminals, with final orders of removal who have been freely walking the streets of the United States for years.³

¹ Fact Sheet: Re-Establishment of Diplomatic Relations With Cuba, U.S. Department of State, Office of the Spokesperson (July 6, 2015), available at <http://www.state.gov/r/pa/prs/ps/2015/07/244623.htm> (“President Obama announced on July 1, 2015, the historic decision to re-establish diplomatic relations between Cuba and the United States of America, effective July 20.”).

² Bernard Weinraub, “U.S. and Cuba Gain an Accord on Repatriation,” *The New York Times* (Dec. 15, 1984), available at <http://www.nytimes.com/1984/12/15/world/us-and-cuba-gain-an-accord-on-repatriation.html>; Nora Gamez Torres and Alfonso Chardy, “In Miami, Deportation Fears Rise As Revives Relations With Havana,” *The Miami Herald* (Jan. 3, 2015), available at <http://www.miamiherald.com/news/nation-world/world/americas/cuba/article5388627.html>.

³ Gamez Torres and Chardy, *supra*, note 2.

Cuban recalcitrance in repatriating criminals with final orders of removal has resulted in the release onto the streets of people like Santos Hernandez Carrera, a Cuban national who raped a woman at knifepoint and whose release from ICE custody was ordered by a federal judge in March 2008.⁴ Criminal Cuban nationals who ICE has been forced to release because of Cuban recalcitrance have gone on to commit further horrendous crimes. As the Boston Globe reported in June 2015:

- Immigration officials tried to deport Luis-Leyva Vargas, 47, to Cuba after he served three years in a Florida prison for unlawful sex with a teen. In 2008, officials released him. Two years later, he kidnapped an 18-year-old in Rockingham County, Va. at knifepoint and raped her. Now he is serving a 55-year prison sentence.
- Felix Rodriguez, a 67-year-old sex offender convicted of raping children as young as 4 in the 1990s, was freed in 2009, also because Cuba would not take him back. Months later, he fatally shot his girlfriend in Kansas City. He pleaded guilty and is serving 10 years in a Missouri prison.⁵

The negotiations between the United States and Cuba to re-establish diplomatic relations presented a singular opportunity to require, as a condition precedent to re-establishment of diplomatic recognition, immediate Cuban repatriation of all of their nationals with final removal orders, including the convicted criminals that Cuba has heretofore refused to take back. I gather, however, that this did not happen.

In light of this distressing failure, please provide written responses to the following questions by August 21, 2015:

1. What is the current population of Cuban nationals with final orders of removal currently in the United States?
2. How many of the Cuban nationals with final orders of removal currently in the United States have a criminal record?
3. How many of the Cuban nationals with final orders of removal currently in the United States have an Employment Authorization Document (EAD)?
 - a. Please give a breakdown of the legal basis on which these individuals were granted an EAD: e.g. the number that got an EAD pursuant to an Order of Supervision, grant of deferred action, grant of parole, etc.
 - b. Please also identify the number the Cuban nationals with final orders of removal and a criminal record currently in the United States that have an EAD.
4. Please provide a breakdown of the crimes convicted by the Cuban nationals described in question #2, with the number of aliens convicted of each listed crime.
5. Please provide a breakdown of the number of years that the Cuban nationals described in question #2 have had a final order of removal, with the number of aliens with a final order of

⁴ Maria Sacchetti, "ICE's sex offender policies under scrutiny," The Boston Globe (June 14, 2015), available at <https://www.bostonglobe.com/metro/2015/06/13/ice-freed-sex-offenders-often-without-notifying-states/v14qAOXKUOqAtaFeKGeGWI/story.html>.

⁵ Id.

- removal that is less than a year old, between 1 and 5 years old, between 5 and 10 years old, between 10 and 20 years old, and those with a removal order more than 20 years old.
6. In the discussions between the U.S. and Cuba regarding re-establishment of diplomatic relations, did the Administration even raise the issue of repatriation of Cuban nationals with final orders of removal? If not, why not? If so, what was the outcome of that discussion?
 7. Why didn't the Administration make repatriation of all Cuban nationals with a final order of removal a condition precedent to re-establishment of diplomatic relations?
 8. According to testimony from Gary Mead, former Executive Associate Director for Enforcement and Removal Operations at ICE, ICE and the Department of State concluded a memorandum of understanding (MOU) in April 2011 "establishing ways in which [the Department of State] and the Department of Homeland Security will work together to ensure that other countries accept the return of their nationals in accordance with international law."⁶ According to Mr. Mead's testimony, the MOU provides that ICE and the State Department will pursue the following steps, in the order set forth below, in an attempt to increase compliance among countries that systematically refuse or delay repatriation of their nationals:
 - a. issuing a demarche or series of demarches at increasingly higher levels;
 - b. holding joint meetings with the Ambassador to the United States, DOS Assistant Secretary for Consular Affairs and the Director of ICE;
 - c. considering whether to provide notice of the U.S. government's intent to formally determine that the country is not accepting the return of its nationals and that the U.S. government intends to exercise the provisions of Section 243(d) of the Immigration and Nationality Act to gain compliance;
 - d. considering visa sanctions under Section 243(d) of the Immigration and Nationality Act; and
 - e. calling for an interagency meeting to pursue withholding of aid or other funding.⁷With respect to Cuba, at what point is the Administration in the series of steps set forth in the MOU? Please give specific dates when each of steps (a)-(e) set forth in the April 2011 MOU, and reproduced above, were accomplished for Cuba.
 9. If a demarche, which is the very first action prescribed by the ICE-State MOU, has not been issued against Cuba, please explain why this has not been done, in light of the fact that the ICE-State MOU was signed in 2011, Cuban recalcitrance regarding repatriation has been a problem for decades, and tens of thousands of Cuban criminals with final orders of removal freely walk the streets of the United States.
 10. If a demarche has not been issued against Cuba, when, if ever, does the U.S. Government plan to issue one?
 11. Once a demarche is issued, how much time must pass before, pursuant to the ICE-State MOU, a joint meeting with the Ambassador to the United States, DOS Assistant Secretary for Consular Affairs and the Director of ICE is scheduled?

⁶ Statement of Gary Mead, Executive Associate Director, Enforcement and Removal Operations, U.S. Immigration and Customs Enforcement, before the House Judiciary Committee, Subcommittee on Immigration Policy and Enforcement, "H.R.1932, the 'Keep Our Communities Safe Act of 2011'", <http://www.dhs.gov/news/2011/05/24/statement-gary-mead-executive-associate-director-enforcement-and-removal-operations>.

⁷ Id.

12. If the formal demarche and joint meeting described in the first two action steps set forth in the MOU were never carried out because of the lack of diplomatic relations, did the Administration ever proceed to the third, fourth, or fifth steps (relating to sanctions) set forth in the MOU? If not, why not?
13. For each of the past five fiscal years, including the current fiscal year, how many Cuban nationals has the U.S. Government requested be repatriated to Cuba and what was the outcome of those requests?
14. Is it the intent of the Departments of State and Homeland Security to seek some sort of resolution to Cuban recalcitrance through the biannual U.S.-Cuba migration talks? If so, why does the Administration believe that those discussions will yield any fruit on repatriation, when they haven't done so for many years, and especially now that the U.S. has given away the enormous political/diplomatic leverage it had against Cuba (re-establishment of diplomatic relations) to pressure Cuban cooperation?
15. Have visa sanctions against Cuba under Section 243(d) of the Immigration and Nationality Act been ruled out?
16. Are there any visa- or immigration-related sanctions other than the non-issuance of one or more categories of nonimmigrant visas that could be imposed on Cuba for its recalcitrance on repatriating its nationals with final orders of removal?

Please number your responses according to their corresponding questions. If you have any questions, please contact Kathy Nuebel of my Committee staff at Kathy_Nuebel@judiciary-rep.senate.gov or 202-224-5225. Thank you.

Sincerely,



Charles E. Grassley
Chairman