ATTEMPTS TO REPEAL THE CUBAN ADJUSTMENT ACT: A PUBLIC POLICY ANALYSIS

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Abstract

Historical struggles to maintain, reform or repeal the Cuban Adjustment Act in the US Congress reveal a complex ideological, political and policy-driven battle among a wide range of groups acting in the domestic and foreign policies fronts. Drawing on the methodological approaches of public policy analysis, this paper focuses on three critical moments in which US efforts to reform its immigration system clashed with the influence of Cuban-American hardliners. This group has been successful in using its political clout in order to influence the public debate against repeal, by insisting on the longer term ideological value of the Act in the context of the US Cuba policy, in spite of structural trends in favour of restricted immigration.

Key words: Cuban Adjustment Act, public policy, political process, immigration policy, US Cuba policy, Cuban-Americans

Introduction

In the context of the Cold War, US refugee policies were conceived in alignment with the goal of confronting international communism led by the Soviet Union.
As an example of the politicised nature of the US approach, a memorandum from the National Security Council would describe the Refugee Relief Act of 1953 as a means to “encourage defection of all USSR nationals and ‘key’ personnel from satellite countries”, and suggested that it would “inflict a psychological blow on communism” (Zolberg 2006: 322).

In the case of Cuba, President Dwight D. Eisenhower defined a flexible admission policy, in reaction to the triumph of the Revolution of 1 January 1959. The policy was aimed at destabilising Cuban society by draining away its valuable human resources, discrediting it and installing a counterrevolutionary social base in the US. As a result, the physical presence and legal uncertainty of some 300,000 Cubans who had immigrated to the US at different stages since 19592 pressed for changes to the US immigration system to ensure a successful resettlement programme, especially in South Florida communities where most had relocated.

Thus, the US Congress passed the Cuban Adjustment Act (hereinafter, the CAA) on 2 November 1966 in the context of both practical and political challenges. With broad popular support, the CAA was passed 300–25 in the House of Representatives and by oral vote in the Senate. The Act legislative history (US Congress 1966a) shows that concerns of some members of Congress – regarding the excessive use of parole;3 its permanent nature; its contradictions with the migration policy envisaged for Latin America; the impact on employment, fundamentally in black communities; and the possible weakening of the counterrevolutionary mass in Cuba – were outweighed by the more strategic intention of portraying Cuban migration as a testament of the failure of communism, a central component of the US hemispheric foreign policy.

Through the CAA, Congress gave the Attorney General the discretionary prerogative, under the regulations he may prescribe, to grant, after two years, later reduced to one, legal permanent residence to Cuban nationals, provided they meet certain requirements (US Congress 1966b). Its language did not explicitly define how the

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2 Researchers Jesús Arboleya (2013) and Susan Eckstein (2009) agree that the study of the Cuban migration flows after the triumph of the Revolution in 1959 could be organised in the following stages: 1959–62, more than 220,000 people; 1962–5, about 58,000 irregularly; 1963, between 2,700 and 7,000 people, through the port of Camarioca, Matanzas; 1965–73, more than 260,000 Cubans through the so-called “Airlift”; 1980, about 125,000 people through the port of Mariel; 1994, more than 35,000 rafters.

3 The issuance of the parole is a prerogative provided in the US Immigration and Naturalization Act, for discretionary, casuistic use, in humanitarian situations or of significant public benefit by the Attorney General, and since 2003, the Secretary of Homeland Security (American Immigration Council 2018)
admission process would be carried out, but other executive and judicial decisions established the necessary precedents for the consolidation of the dictated policy.

From this formative moment, the CAA proved to be the bedrock of US policy toward Cuba, second only to the economic blockade that continues to punish the Cuban people for their resistance to US aims. However it also greatly complicated US efforts to respond to a series of political, economic and humanitarian crises that resulted in episodic waves of irregular migration. Scholars in the US have pointed out multiple contradictions stemming from the Act’s increasingly historical irrelevance (Eckstein 2016; Reynolds 2011; Tálamo 2002; The Cuban Adjustment Act of 1966 2001).

The purpose of this paper is to examine how and why these extensively documented conflicts and contradictions have not been sufficient for the Act to be repealed. It focuses specifically on three serious attempts to abrogate the CAA that emerged with migration crises: 1980–4, 1994–6 and 2011–16. It also draws on the methodological approaches of public policy analysis. A public policy is a set-sequence of decisions, related to the choice of ends and means, long or short range, in a specific situation and in response to problems, made or decided by a formal authority within the framework of its competence and which is collectively binding (Aguilar Villanueva 1992: 41). It implies action or inaction (Dye 1992).

Harold Laswell constitutes a necessary reference for establishing a concept of public policy analysis, since he distinguished between policy analysis, normatively oriented towards the search for the best public policy in terms of efficiency and equity, and the study of policy making, positively oriented to describe, classify and explain the decision and operation pattern with which a given political-administrative system or a particular government proceeds in its public policies (Aguilar Villanueva 1992: 42). The present work adopts the latter approach which allows the CAA to be evaluated not as a static legal provision, but as a component of the US migration policy towards Cuba, seen as a political process mediated by interests of actors in the US political system, that sometimes are divergent and competitive.

As Antoni Fernández (1999) emphasises, the process of making public policy overall is far from linear, closed or free of contradictions. The following analysis highlights little known intricacies of the politics around the CAA to help explain how efforts over the last 30-plus years have sought and failed to reform the law, or in other words, why the decision-making process has not ended up abrogating the CAA.

The consideration of CAA repeal as part of this process has occurred only in key specific moments that allowed Cuban migration problems to enter the government agenda. Anthony Downs’s analysis on the “issue-attention cycle” contributes to understanding the temporary dimension of the problems that affect individuals’
attitudes. He observes that problems rise to prominence, remain in this status for a short period and then gradually fade from the centre of public attention. This “gradual decline” is the result of perceptions about the difficulty, the cost (political, economic and social) and the rise of other problems to the previous phase of “alarmed discovery” or “euphoric enthusiasm” (Downs 1972: 39–40).

Following Fernandez, not all the problems that afflict society become public problems and not all public problems reach the point of interest or concern that triggers public decisions. Among the requirements for public problems to enter the government agenda are: reaching proportions of crisis, having a certain particularity, having certain emotional aspects, having a broad impact and touching issues related to power and legitimacy (Fernández 1999: 471).

Policy change often includes the turmoil of competing interests of diverse groups whose relative positions, strengths and weaknesses change with time and circumstance. Theodore Lowi (1964) aptly argues that each public policy generates its own centre of power or “arena”, which tends to develop its own political structure, political process (politics), elites and group relations. The nature of the policies affects the conflictingness of the process. According to Aguilar Villanueva (1992: 32) “regulatory” policies, meaning those introducing mandatory regulations for a group, are of conflicting nature. They involve the exclusive and conflicting interests of groups that move around the same issue and are forced into coalitions or transactions of reciprocal concession, hence the eventual solution does not equally favour the parties involved: there are affected and benefiting sides.

These ideas are important when evaluating the resistance or advocacy of certain groups to reform the CAA over time, which impacts the way they identify and portray Cuban migration problems, and formulate potential solutions. Perceptions held by Cuban-American groups in favour of a more flexible admission system for Cuban migrants have often clashed with views by immigration control agencies, or the White House political interests.

As to the development of alternatives, Lindblom (1959) points out that policy options taken into account by a decision-maker are not all, or the best, but those that differ little from those carried out previously. This is because the further away an alternative is from known policies, the anticipation of its consequences and impacts becomes more difficult. This “incrementalism” was a characteristic feature of the US decisions regarding migration policy towards Cuba until 2014.

The CAA in the Context of Mariel (1980–1984)

Undoubtedly, the exodus of some 125,000 Cubans between April and September 1980 through the port of Mariel, changes in the ethnic and socio-economic fabric of migrants, as well as the impact on the budgets and security of the host
states, ensured that this migration process became a public problem worthy of attention for the US government and the Congress.

The events of Mariel occurred in a period that could be described as a transition between the prevailing liberal vision in the 1960s and the rooting of a process of increasing criminalisation of immigration from underdeveloped countries, consistent with the rise of conservatism in US politics. Hence, a totally different regulatory and political context paved the way for this problem to enter the government’s agenda in a different fashion, compared to 1965.


President Carter initially invoked his powers to grant Mariel Cubans a refugee treatment. But as the crisis progressed, Carter abandoned this course of action and defined the category “entrants”, with the status pending determination, for both Mariel and Haitian migrants, breaking with the practice of considering Cuban migrants as “refugees” automatically. Likewise, the US government considered that certain Cubans were excludable, according to US

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4 Among the contradictions referred to, Victor Palmieri, then Coordinator of Refugee Affairs, pointed out, on 20 June 1980: 1) the inability of the immigration authorities to properly process the “refugees” in their countries of origin; 2) the ineligibility of many Cubans to qualify as “asylees”, under the terms of the new legislation; 3) difficulties in processing massive amounts of migrants without valid documentation (the Act had established procedures for a case-by-case basis); 4) the federal and local budgetary impact for the resettlement of migrants; 5) as well as the difficulty of returning them to their country of origin or resettling them in third countries (Palmieri 1980).

5 In accordance with the 1951 Convention Relating to the Status of Refugees, a refugee is a person that “owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of 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” (UNHCR 1951: Art. 1(A)(2), p. 14).

6 The term “excludable” is used to refer to those Cuban immigrants whose admission has not been authorized by the US government, in application of the inadmissibility clauses provided for in the Immigration and Nationality Act of 1952, and its subsequent amendments. For example: having entered irregularly, having committed certain crimes, having been linked to terrorism, having certain diseases, among others.
immigration law, for reason of not being eligible to stay in its territory, due to their criminal record in Cuba or crimes committed during their stay in the US.

As part of the efforts that accompanied Carter’s decision to regularise the status of the new immigrants, Senator Ted Kennedy proposed the repeal of the CAA through initiative S 3013, of August 1980 (Kennedy 1980). The related version in the House of Representatives, H.R. 7978, was introduced by Peter Rodino (Rodino 1980). Kennedy had been the main sponsor of the CAA in 1966, so his conduct carried additional symbolism. However, the proximity of the general elections prevented these bills from progressing through the legislative process. Subsequently, and until 1984, these and other legislators, such as Representative Romano Mazzoli and Senator Alan Simpson, all important figures on immigration matters, continued their efforts to repeal the CAA, framed within the objective of reforming the immigration system, making it more homogeneous and less discriminatory on the basis of nationality (Rodino 1981; Mazzoli 1982, 1983).

An analysis of the House hearing held on 9 May 1984 to address bills aimed at solving the situation of the Cuban and Haitian “entrants” shows that the INS also supported the repealing option. This agency’s Commissioner, Alan C. Nelson, associated the permanence of the CAA with the possibility of a repetition of the Mariel events. In this regard he affirmed: “We can’t keep leaving this on the books for the future. We need to resolve it, hopefully with comprehensive reform legislation; repeal is something that clearly needs to be addressed” (US Congress 1984: 10).

Nelson’s statement constituted a turning point from the executive branch’s traditional position of favouring the CAA. It set a precedent regarding the attitude of policy-implementing agencies contrary to the preferential treatment given to Cuban migrants. In this period, even though the INS accepted applications of status adjustment under the CAA, it did not adjudicate any case, pending the outcome of the debates in Congress. This confirmed the executive branch intention not to legitimise the CAA in practice.

However, the State Department’s more moderate position, which avoided referring directly to the CAA, suggests the purpose of preventing further politicising the process. President Ronald Reagan was interested in wooing the Cuban-origin community, as a base of support for its conservative policies, both domestically and internationally. For that reason its administration sponsored the creation of the Cuban American National Foundation (CANF) 1981. The CANF quickly became one of the most powerful ethnic lobbies in the country whose main focus was maintaining a hard stance toward Cuba. But the CANF wouldn’t follow the apparent government and public’s interest to restrict irregular migration. Conversely, this group would lobby to keep the CAA on the books as well as the preferential treatment to Cuban migrants.
Representative Lawrence Smith, a democrat from Florida, came to question whether Reagan knew personally of the INS efforts to rescind the CAA, due to its popularity among Cuban-Americans and their sympathy towards Republicans. Cuban-American organisations such as Greater Miami United, and others of a religious nature such as the National Conference of Catholic Bishops and the National Council of Churches, also supported the CAA, to which they attributed practical and political-ideological value.

By 1984, due to the time elapsed after the events that gave rise to it; the Cuban migration problem had transitioned to the phase of “gradual decline”. Public opinion had moved from an initial rejection motivated by multiple pejorative depictions of the Mariel Cubans, to empathy for the situation of regulatory uncertainty in which many remained. On the other hand, the Reagan administration’s ideological emphasis elevated the importance of what was considered the strategic objective of making Cuba back down from its alleged role as a Soviet Union satellite and exporter of its Revolution to Central America and Africa, thus relatively lessening the significance of immigration-related matters.

Efforts to repeal the CAA ended in June 1984, with an amendment to restore it in the House version of the immigration reform bill, HR 1510, introduced by Peter Rodino and agreed upon by oral vote (Rodino 1984). As to the status of the Mariel migrants, it was technically resolved with Section 202 of the Immigration Control and Reform Act of 1986 (US Congress 1986). In practice, most Cubans adjusted their status under the CAA between 1984 and 1985, thereby reaffirming its leading role in the regulatory framework for Cuban immigration.

Given the complexity of repealing the CAA, the US government acted incrementally. It narrowly aimed at achieving the return of Cuban excludable migrants; but without looking in a comprehensive, objective manner to other endogenous and exogenous factors of Cuban migration, such as the economic situation aggravated by sanctions, the CAA and the encouragement of irregular migration.


The demise of the European socialist camp caused a readjustment of the US security priorities. The perceived threats now would be oriented to possible disruptions caused by the fragmentation and creation of new states, migration, poverty, weapons proliferation and the emergence of regional powers that could challenge its hegemony. The uncontrolled migration of Haitians, motivated by the coup d’état promoted by the US government against President Jean Bertrand Aristide in 1991, evidenced a new position regarding this type of events. By
Executive Order 12 807 of 1992, George H. W. Bush ordered the interdiction and repatriation of migrants, even without determining if they classified as refugees, according to the 1980 law. The ruling constituted a key precedent as to the USCG’s immigration control functions.

In Congress, a set of bills were passed in 1996 in order to address irregular immigration. The Anti-Terrorism and Effective Death Penalty Act (AEDPA) turned minor crimes into aggravated ones and expanded the prerogatives for immigration control of agencies such as the Federal Bureau of Investigation and local authorities. The Illegal Immigrant Reform and Immigrant Responsibility Act (IIRIRA) widened criteria and mechanisms to deport immigrants, including in an expedited way. The Personal Responsibility and Work Opportunity Reconciliation Act, complemented IIRIRA and AEDPA in terms of limiting the rights of immigrants, by suppressing federal social benefits.

Thus, in 1994, the year of the Rafter Crisis, a different scenario as to the Cuba migration policy process had begun to take shape. In August that year, the Cuban government’s decision to discontinue efforts to prevent irregular emigration, motivated by the persistent stimulating actions of the US, caused a spike in irregular departures by sea, rising to around 36,900 people from the beginning of the year to September (Eckstein 2009). This new crisis contributed to Cuban emigration becoming a public problem for the US, worthy of being part of the decision-making process.

Unlike President Carter, the Clinton administration reacted quickly to stop the Cuban irregular flow, for which he instructed the start of negotiations with the Cuban side. In the wake of the Rafters Crisis, the US defined the Cuban emigration problem, in the first place, in immigration terms. As such, it became part of the government’s agenda and the Clinton administration sought alternatives accordingly. The preferential treatment for Cuban migrants contradicted the increasing amount of tools at the disposal of the executive branch and the spirit of Congress with regards to irregular migration.

The process was not shielded from politicisation, since in this period the US government held high expectations as to the imminent collapse of the Cuban revolution. In the area of migration policy, the prevailing logic was that, in the midst of an economic crisis, Cuba should be prevented from “exporting” its internal problems, hence the US should double down on its support for Cuban

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7 This measure departed from Reagan’s September 1981 Executive Order 12324 that instructed the Attorney General to take appropriate measures on board USCG vessels to be able to determine whether migrants were genuinely fleeing political persecution (Reagan 1981).
domestic subversion, based on the objective of facilitating the desired transition to a capitalism subordinated to the US hegemonic goals.

The 1994 and 1995 migration accords were the course of action followed by the executive branch in use of its prerogatives. Authors such as Reynolds (2011) and Tálamo (2002) consider that these actually meant a partial repeal of the CAA through executive action, by considerably limiting the requirement for migrants to be physically present in US territory, required by the Act.8

According to Professor Robert Bach,9 in parallel, the Clinton administration set out to eliminate the CAA in an effort to harmonise the immigration system (2017, R. Bach interview with the author). Worth noticing is the introduction of the H.R. 3854 bill by Michael Kopetski, a democrat of Oregon, with that explicit goal, in February 1994 (Kopetski 1994). The lack of bipartisan support and the advent of the 1994 midterm elections prevented the bill from advancing. Subsequently, the change in the forces correlation in Congress, in favour of republican majorities in both chambers, modified the legislative priorities and intensified the opposition to the Clinton administration (González 2018).

Notwithstanding, as per the congressional debates between 1995 and 1996 that led to the passing of the IIRIRA, advocators of the migration accords, such as Senators Alan Simpson and Christopher Dodd, tried to replace the CAA with a safeguard to benefit only Cuban recipients of parole issued by the US Interests Section in Havana (US Congress 1996a).

The responses generated by various interested groups suggest that the US Cuba migration policy became an “arena of conflict”, based on the changes in the regulatory structure of Cuban immigration to the US. It becomes apparent that the decision to repatriate Cuban migrants, through the Joint Declaration of May 1995, established new rules favoured by policy-implementing agencies such as the Department of Defense, the INS and the USCG, authorities of the State of Florida as Governors Lawton Chiles and Senator Robert Graham, and public opinion, in which Mariel memories were still vivid. However, this course of

8 With the Joint Communiqué of September 1994, the US committed to a floor of 20,000 visas per year to guarantee legal emigration from Cuba, to jointly work with the Cuban side to prevent irregular migration and to the transfer of irregular Cuban migrants to relocation centers outside the US. Through the Joint Declaration of May 1995, the US and Cuba agreed on repatriation procedures for migrants interdicted at sea.

9 Professor Robert Bach served as INS Executive Associate Commissioner for Policy Planning (1993–2000). He has written articles and books on the process of social integration and economic adaptation of Latino migrants in the United States, including Cuban-Americans. He is an expert on United States immigration policy and border security.
action was fervently opposed by conservative sectors and those associated with Cuban-American hardliners, whose influence in the US Cuba policy decision-making process was diminished.

Going forward, until the end of the Clinton administration, they focused their efforts on increasing controls over Congress and the executive branch, including in the field of immigration. Senator Robert Graham himself led the effort to oppose the initiative promoted by Simpson. Along with conservative colleagues, he managed to include Section 606 of IIRIRA (US Congress 1996b), which made the CAA repeal contingent upon changes in Cuba’s domestic order, as stipulated in the Helms-Burton Act of 1996 (Cuban Democratic and Solidarity Act). The resounding vote 67 to 32 indicated that, in the case of Cuba, Congress responded more to ideological motivations than to the restrictive spirit prevailing with regards to immigration. In this sense, the support offered to the Graham amendment by Democratic senators who later advocated for the improvement of bilateral relations, in different degrees and areas, should not be disregarded, notably John Kerry, Joe Biden, Patrick Leahy, Byron Dorgan, Kent Conrad and Max Baucus (US Congress 1996a: S4397).

Aware of Congress’s restrictive intention with regards to illegal immigration, Cuban American hardliners took every opportunity to underline their point of view that Cuban migration problems responded to the Cuban socialist political system, so the permanence of the CAA was justified. For instance, in June 1999, Congressman Lincoln Diaz-Balart, Republican from Florida, using unsubstantiated and rhetorical language, urged the Clinton administration to terminate the migration accords of 1995, which he considered a reinterpretation of the CAA original meaning (US Congress 1999: H5143). In order to strain bilateral relations as a whole, Diaz-Balart affirmed that the US should not treat what he called the “Cuban crisis” as an immigration issue but as a national security matter.

Professor Robert Bach (R. Bach, personal interview with the author, 14 December 2017) explains that, in a context in which irregular migration by land was not impactful enough to become a public problem, the US government consciously decided to leave the door open for Cubans effectively arriving into the US territory. Thus the implementation of the so-called “wet foot-dry foot” policy was a mechanism conceived by the Clinton administration, in anticipation of the migration accord’s conflicting nature, due to the FNCA opposition. In assessing CANF’s levels of influence on US Cuba migration policy, Vicki Huddleston10 acknowledged: “they made life unbearable for any official who

dared to send a Cuban back, including those involved in vessel or aircraft hijacking “ (V. Huddleston, 2017 email to the author). The policy had the effect of legitimising the CAA, for it ratified the eligibility of those Cubans who made it to the US by any means and method.

The Clinton administration’s behaviour continued the incrementalist tradition started by Reagan. Implementation of the “dry feet-wet feet” policy is a direct result of constraints imposed by politics to the decision-making process. The possibility of returning all irregular migrants, by land and sea, would have been a more effective course of action in the context of the Rafters Crisis. However, that decision could only have been the result of a comprehensive evaluation of the US Cuba migration policy within the broader spectrum of bilateral relations. This is something the Clinton administration was not willing to confront, due to its political cost with the Cuban-Americans and the Congress.

During the government of George W. Bush, there were no meaningful attempts to repeal the CAA. Absent a crisis, efforts by representative Barney Frank, Democrat of Massachusetts, through H.R. 5670 (Frank 2006) even if made when the Congress attempted to increase border security as part of a comprehensive reform, were isolated and got little attention. On the contrary, Floridian Cuban-American Senator, Mel Martinez, Republican Party key figure and one of the main lawmakers behind the reform, used to speak openly about the Cuban migrants’ alleged political nature, in order to rationalise CAA’s staying on the books.

Strikingly, the version of the said reform used a subtle language to exempt Cubans apprehended at or between ports of entry from detention (Specter 2006: sec. 131(c)(2)). Had it become law, this clause would not only have undermined current migration accords with Cuba, but also placed a very complex obstacle to the negotiation of future accords aimed at dealing with irregular migration by land. Only a strong opposition by the USCG blocked Cuban American hardliners attempts to use their influence to weaken repatriation proceedings, in 2006. But they successfully pressed the W. Bush White House to designate Emilio Gonzalez, then US Citizenship and Immigration Services Director, as liaison between the Government and Cuban Americans. Also, the creation of the Cuban Medical Professional Parole Program and the decision to consider Cuban consulates’ certificates as valid to affirm Cuban citizenship (Matter of Vazquez 2007), in 2007, were measures put in place with the aim of undermining Cuban medical internationalism, as per this group’s request.

The CAA in 2011–2016

Cuban American hardliners aimed at opposing the incoming Obama administration’s engagement approach toward Cuba. In 2011, Republican lawmaker David Rivera introduced bill H.R. 2831 to enable the Secretary of
Homeland Security to revoke the Permanent Residence of Cubans who travelled to the island before having obtained US citizenship (Rivera 2011). No Cuban immigration problem motivated his behaviour, but rather the increasing interactions of Cuban Americans with Cuba, after the administration eased family travel and remittances. Cuban Americans broke with a decades-long, unrestricted practice of defending a preferential treatment for Cuban migrants.

At the congressional hearing held in May 2012 to discuss the merits of the bill, Rivera’s position was supported by Elton Gallegly, Republican Majority Leader on the House Subcommittee on Immigration Policy and Enforcement, and panellist Mauricio Claver-Carone, Executive Director of the Political Action Committee “United States-Cuba Democracy”, the most preponderant and effective Cuban-American pressure group since 2003, whose goal was to keep a hard, aggressive stance against Cuba (US Congress 2012).

Democrat Zoe Lofgren, ranking member, opposed Rivera’s amendment. Even so, she did state her party’s support for the CAA, but for totally different reasons. The congresswoman positioned the law as a vehicle to facilitate family reunification under the migration accords with Cuba and advocated expanding the rights enshrined in it to other migrants. Her positions were supported by Tomás Bilbao, from the Cuban Studies Group, a Cuban-American interest group with a more moderate tendency.

The aforementioned hearing confirmed the political complexity of the CAA. It revealed the confluence of congressmen and groups of diverse political spectrum around the legitimacy of the CAA, in that particular context. Nonetheless the debate was interjected by political dynamics, and the sometimes conflicting views each major party holds on immigration. Republicans have tended to stress the need for immigration control while democrats have favoured ethnic inclusiveness. It is also worth noting the convergence of all groups around the predominant economic nature of Cuban migrants which departed from the premise established after 1959 that all Cubans should be treated as refugees.

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11 With the same motivation, Congressman David Rivera had introduced the H.R. 2771 in 2011, in order to extend the physical presence required by CAA, from one to five years, and prevent the extension of its benefits to those who travelled to Cuba after having been admitted or received the parole. Rivera later replaced his bill with H.R. 2831 that would enable the Homeland Security Secretary to revoke the permanent residence of Cubans who travelled to the Island before having obtained the US citizenship (Rivera 2011). The markedly political nature of Rivera’s manoeuvres impeded its advance. Rivera lost re-election in 2012 to fellow Cuban-American Joe Garcia of the Democratic Party.
Rivera’s initiative had little support in Congress. The hearing resulted from the ability of Cuban hardliners to use the political process in their favour, benefiting from a Republican majority in the House of Representatives. Once again, without any disturbance of the US international policies or domestic politics, this effort ended with Rivera’s defeat in 2012 and the closing of the electoral cycle. Cuban-Americans hardliners’ goal seemed to be to intimidate the political participation of new generations of migrants. The arguments provided were clearly ideological, in association with the CAA’s original objectives of providing refuge to those “politically persecuted”. But their strength as a foreign policy matter waned when compared to previous periods.

Beginning Barack Obama’s second term, Cuban irregular migration began to grow, mainly by land. Generally, the migration process started with legal travel from Cuba, with transit through various countries in South, Central America and the Caribbean. The number of Cubans found to be inadmissible by the US authorities, essentially due to their irregular entry, grew 441%, from 12,290 to 54,226, between 2012 and 2016 (Department of Homeland Security 2017: table 37). The interdictions by the USCG rose from 422 in 2010, to 2,111 in 2014, and 5,213 in 2016, which represented an increase of 247%. The 2016 figure was higher than in any previous year since the Rafters Crisis.

Several reports referred to the Cuban irregular migration as a crisis, wave and a mass exodus. It is not this work’s aim to definitively qualify the Cuban migratory process, but rather to establish that Cuban irregular migration became once again a public problem that entered into the US government’s agenda.

As important as entry in the agenda is the definition of the problem. It was not a secondary issue, since the definition determines the type of solution to apply. In the aforementioned scenario, the Cuban-American hardliners fought hard to define the Cuban migratory problem in ideological terms, as opposed to political institutions, the general public opinion and other civil society actors, which rather emphasised the contradictions of the preferential treatment given to Cuban migrants.

Public opinion was significantly more in favour of repealing the CAA compared to the previous periods. Newspapers, such as Miami Herald, Sun Sentinel, New York Times, USA Today, LA Times and El Nuevo Herald, covered the subject of the Cuban irregular migration systematically and published editorials and opinion columns in which they advocated for repeal.

In Congress, the need to find a solution to the uncontrolled flow of Cuban migrants paved the way for repeal of the CAA to be assessed as a viable alternative. This option was led by Paul Gosar (2015a), Republican of Arizona, and Texans Henri Cuellar and Blake Farenthold (Farenthold 2016), Democrat and Republican respectively. They represented states regularly affected by irregular migration, hence their sensiveness to public opinion around the Cuban case.
In this regard, Gosar stated: “Cuban nationals should be treated under the same immigration rules as any other person seeking to immigrate to the United States and should not receive preferential treatment.” The representative was praised by limited-immigration advocacy organisations like the Federation for American Immigration Reform (FAIR) and NumbersUSA. FAIR’s president Dan Stein argued that US Cuba immigration policy should be normalised in the context of US government decision to normalise relations with the Island, and considered the CAA “an outdated relic of the Cold War”, serving no national interest, perpetuated purely for domestic political purposes (Gosar 2015b).

As can be seen from the above statements, Gosar’s initiative pointed to the old intention of standardising the US immigration system, but also to the conviction that the ideological drive considered valid in 1966 no longer could be sustained in terms of the US Cuba policy. Thus, repealing the CAA was the right solution to the Cuban migration problem. Interestingly, though not explicitly, FAIR signalled the special interest of Cuban American hardliners as the single reason why the CAA is kept alive.

However, these initiatives were not followed up by meaningful efforts to get them through the legislative calendar, which can be explained by the lawmakers’ little influence on the issue and the electoral weight their actions carried.

Of greater interest was the Cuban-American hardliners’ renewed support for CAA modifications. Bolstered by the request of the Miami-Dade County, representative Carlos Curbelo and senator Marco Rubio introduced H.R. 4247 and S. 2441, seeking to eliminate the benefits granted to Cubans by the Refugee Education Assistance Act of 1980 (Curbelo 2015; Rubio 2016). Although the Cuban irregular migration offered the appropriate time frame, these initiatives were actually intended to oppose the Obama administration’s rapprochement policy towards Cuba, and fundamentally, to reinforce US migration policy as an instrument of social control of the increasingly transnational behaviour of Cuban-Americans with respect to their country of origin.

University of Miami professor David Abraham (2015) wisely observes the exhaustion of the immigration regime as a source of political opposition to Cuba, in those circumstances. Therefore, the migration policy was dysfunctional compared to the projected goals in 1959 of guaranteeing a social base for anti-Cuba policies. It can be deduced that maintaining the preferential treatment would have been counter to the Cuban-American hardliners’ political relevance in the long term.

Again, the intention of this group was never to eliminate the CAA entirely. The title of Curbelo’s opinion in the Miami Herald, “Keep the Cuban Adjustment Act, but clamp down on its abusers” is explicit. The preference to introduce only modifications seems to respond to two fundamental reasons. One is related to
the political viability factor, which in this case, is expressed in the eventual political cost that that the CAA repeal would have, due to the preferential treatment’s deep rooting among Cuban-Americans. This idea is reinforced when considering that 21 of the 29-member Florida congressional delegation, of both parties, co-sponsored Curbelo’s bill; none of them joined Gosar’s efforts to repeal the CAA.

The second is related to the ideological value placed on the CAA by this particular group in its antagonism toward Cuba. Even if Cuban-American hardliners have recognised the predominantly economic nature of Cuban arrivals post-1980, eliminating the CAA would mean admitting a historic defeat and damaging other core components of the US Cuba traditional policy, such as the blockade, to which the CAA is linked through IIRIRA’s Section 606, as mentioned earlier. Hence, the Cuban migratory problem was defined by this group in political-ideological terms.

Evidence shows the relative success of the Cuban-American hardliners in defining the Cuba migration problem, and therefore, in establishing modification of the CAA as a more viable alternative than repeal. At the level of Congress, Curbelo’s bill reached 129 co-sponsorships, insufficient to become law, but much higher than the twelve of the Gosar bill and the two of the one introduced by Farenthold. This indicates the less radical intention of the legislative body regarding the CAA, as well as the legitimacy bestowed on Cuban-American congressmen in relation to Cuban issues, in those specific circumstances.

Likewise, support for changes in the implementation of the CAA, in the sense of benefiting only those Cubans who demonstrated having been victims of political persecution, rose to 75% among Cuban-Americans in 2016 (Survey USA 2016: table 10), in correspondence with the message promoted by the Cuban-American hardliners. In contrast, the proportion of supporters of the “wet foot-dry foot” policy, a matter less publicly addressed by this group, remained unchanged, 63%, in the Florida International University surveys of 2014 and 2016 (Grenier and Gladwin 2014: figure 8; 2016: figure 8 cluster).

With regards to the executive branch, the course of action decided to address the Cuban irregular migration was the negotiation with Cuba of the Joint Statement, signed on 12 January 2017, through which the US eliminated the “wet foot-dry foot” policy and the Cuban Medical Professional Parole Program, among other

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12 In the survey conducted by the Florida International University among Cuban-Americans in Miami in 2014, support for CAA was 86%. Although it was higher in those who emigrated after 1980, it was also solid among those who did it in the periods 1959–64 (64%), 1966–73 (76%) and 1975–83 (80%) (Grenier and Gladwin 2014: figure 7).
aspects. As a practical effect, the universe of people eligible for CAA benefits decreased considerably. This, together with the consensus of the groups interested in migration policy towards Cuba regarding the need to limit Cuban irregular migration, reduces the probability of conflict on this aspect for the future.

In this period, for the first time, immigration decisions were made within the broader context of changes in bilateral relations. The decision to move towards normalisation of relations with Cuba provided a qualitatively different logic for the US Cuba policy decision-making process, including migration policy. This process was less incremental and more rational. It facilitated the US side assuming the political cost associated with eliminating “wet foot-dry foot” policy; admitting Cuban emigration’s multiplicity of causes, among them, pushing factors like worsening economic conditions caused by sanctions and pulling factors like the US Cuban migration regulatory framework, the CAA included. In this period, the public and proactive behaviour of policy-implementing agencies contrasted with the essentially technical role of previous stages. They underscored the benefits of a policy change for their immigration control missions.

As to political viability, it should be noted that there was only one dissatisfied group, Cuban-origin public opinion, particularly those who emigrated after 1980 and second- and third-generation Cuban-Americans, to whom the Obama administration was trying to appeal. However, the timing of the Joint Statement, adopted after the November 2016 elections, reduced any associated cost. At the same time, this group could feel compensated through other aspects of the US Cuba policy, for example, the increased role conferred on Cuban-Americans in the political and economic future of Cuba, the elimination of limits on remittances and family travel, and the easing of economic interactions with their country of origin, all aimed at achieving Cuba’s transition to a subordinate capitalism.

Also significant was the Obama administration’s public and direct exhortation to repeal the CAA. During the press conference following the announcement of the new accords with Cuba, Deputy National Security Adviser Ben Rhodes explained that repeal made sense from a perspective of US Cuba policy, and from a perspective of the US immigration policy. This reinforces the point stressed in this work about the decreasing, changing nature of ideology as the driving factor of the US immigration policy.

Another element compelling the executive branch to advocate for repeal was the regional consequences of Cuban irregular migration, which was frequently

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In 2016, the support for LAC among the groups that emigrated in the stages 1980–94 and 1995–2016, was 60% and 84% respectively, higher than 40% of the previously emigrated (Grenier and Gladwin 2016: figure 7 cluster).
associated with violence, human smuggling and trafficking in persons; as well as with the disruption of migration laws and proceedings of the affected nations. In this period as never before countries of the region were able to convey their demands to the US with relative intensity and unity, particularly with regards to the US responsibility for the situation created. In August 2016 nine foreign ministers addressed a letter to Secretary of State, John Kerry to request the revision of the CAA, the “wet foot-dry foot” policy as well as a high-level meeting to discuss the issue. The region came to further emphasise the contradictions between flexible admission of Cuban migrants and the strict policy applied to other nationalities.

As a reaction to the new accords, senator Marco Rubio and representative Ileana Ros-Lehtinen reported they wouldn’t seek reinstating the “wet foot-dry foot” policy, in recognition of the anti-CAA predominant spirit. Their main grievance was against the Obama administration tying the end of the policy to the wider normalisation process. An initiative introduced in the Florida legislature by conservative Republicans René García and Anitere Flores, December 2016, to ask the US Congress to revise the CAA, was discarded five months later in the Senate Judiciary Committee (García and Flores 2016), thus contributing to placating the calls for repeal at the grassroots level.

14 In this period, Latin America and the Caribbean countries consolidated or conceived forms of political negotiation and integration more in line with their indigenous interests, without the presence of the US and Canada. For example, UNASUR and ALBA had a more prominent role and the Community of Latin American and Caribbean States (CELAC) was created in 2010. In this process, Cuba played a leading role. On the other hand, organisations established under US influence such as the OAS played a less significant role. The OAS actually lifted the 1962 provision that formally prevented Cuba from participating. The presidents of Nicaragua and Ecuador declared in 2012 that if Cuba was not invited to the VII Summit of the Americas in Panama, in 2015, they would not attend the event. This would have meant a failure for the US, under whose auspices the summit mechanism had been created in 1994.

15 The Obama administration removed during its first five years almost as many aliens as George W. Bush during his eight-year tenure (2,007,588, compared to 2,012,539) accumulating 3,080,195 deportations in 2016 (Department of Homeland Security 2017a: table 39). Between 2009 and 2014, US immigration authorities detected 58,878 inadmissible Cubans, the overwhelming majority of whom were admitted under the “wet foot-dry foot” policy. In 2014 alone, during the unaccompanied minors’ crisis, 24,301 Cubans showed up irregularly at the US border (Department of Homeland Security 2017b: 98–9). This contrasted, for example, with the 63,805 Mexicans in the same situation, most of whom were excluded.
The immigration policies put in place by the Donald Trump administration tended to restrict the universe of Cubans eligible for benefits under the CAA. Such policies include asylum-related programmes like metering and turnbacks, of 2018 and the Migrant Protection Protocols, of 2019; as well as other measures pertaining to the Cuba policy specifically, such as the Cuban Families Reunification Parole Program suspension in 2017, the limitation of the documents required to affirm Cuban citizenship for children of Cubans born abroad in CAA adjudication cases, to passports or letters of citizenship issued in Havana, instead of birth certificates issued in Cuban consulates, in 2019; and the continuation of the deportations under the 2017 Joint Statement.

However, in keeping with its hard-line policy towards Cuba, and the consequent role conferred on the Cuban-Americans, the US government didn’t seek to get rid of the CAA. Legislative actions to modify or repeal the law were also discontinued. Representative Jason Chaffetz introduced bill H.R. 391 in 2017 to rescind the asylum or refugee status of those immigrants who, having been granted such status, returned to their countries of origin unjustifiably and without authorisation from the Secretary of Homeland Security (Chaffetz 2017). It is noteworthy that, even though the bill did not advance in the legislative process, its language explicitly excluded Cuban migrants, thereby ratifying the exceptional nature of the CAA. Lawmakers Blake Farenthold and Paul Gosar, who previously supported repealing, were among the co-sponsors of the Chaffetz initiative. Therefore they tacitly stated their agreement to keep the CAA unchanged. None of the Cuban-American congressmen publicly endorsed the initiative, which would have drawn attention to their double-standard stance.

This happened in part as a result of the containment of the Cuban irregular migration and the end of the electoral cycle. The Cuban migratory problem entered again a phase of decline in the attention of the public, the executive branch and Congress.

**Conclusion**

Cuban irregular migration associated with crisis has been a conjunctural factor favouring attempts to repeal the CAA. Cuban migration problems have entered the government’s agenda due to their large proportions, impact on host states and public opinion. However, after these problems are controlled through executive action, the public and government attention decline, as well as attempts to repeal the CAA.

The nature of the foreign policy instruments used towards Cuba has conditioned the support of the executive branch to the possibility of the CAA repeal. The preference has been to act in a veiled and incremental way, given the
predominance of an antagonistic approach toward the Island. The more hostility, the more veiled the character of this support, and vice versa.

The political viability has been also a conjunctural factor intervening in the prospects of success of attempts to repeal the CAA. Particularly, the eventual support or rejection of various groups of this course of action, the electoral processes, the changes in the correlation of forces in Congress, and public opinion have impacted the nature and scope of the debate.

The ideological strength of US immigration policy toward Cuba as a foreign policy tool has eroded over time as the Cuba threat perception in the US security agenda has diminished and an increasingly restrictive vision as of immigration, particularly in relation to border control, has taken hold in Congress, the executive branch and civil society. This trend remains a structural factor that has encouraged attempts to repeal the CAA.

However, the capacity of Cuban-American hardliners in Congress to influence the US political processes at the local and national levels has become a conjunctural factor contrary to the CAA repeal. They have managed to use their clout to stress the need to keep the Act alive.

References


