
DO CUBANS DESERVE SPECIAL TREATMENT?
A Comparative Study Relating to the Cuban Adjustment Act

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I. INTRODUCTION

The inspiration for this paper came from the author's conversations with a Latina who expressed a sentiment that the author took to be common among non-Cuban Latinos: that Cubans are unfairly favored in relation to non-Cuban Latinos by the United States immigration policy. Feeling some sympathy for non-Cuban Latinos and having very limited knowledge of the United States' immigration law, the author intended to discover the unfairness of the United States' immigration policy toward Latinos from countries other than Cuba. The author became surprised, however, as his analysis of his research led

him to conclude that even now there is a legitimate reason for treating Cubans differently from Latinos of other national origins.

The United States Congress passed the Cuban Adjustment Act of 1966 (“CAA”)¹ in response to a flood of Cuban immigrants that arrived in the United States in 1965.² In the last third of 1965, the total number of Cubans in the United States nearly doubled, from 211,000 to 411,000.³ This mass exodus occurred after three years of suspended flights between Cuba and the United States as part of the latter’s response to the Cuban Missile Crisis.⁴ On September 28, 1965, Fidel Castro, revolutionary leader of Cuba,⁵ announced that those who wished to go to the United States could do so if they had relatives in the United States and if those relatives asked for them.⁶ The result was that “a fleet of boats from Miami, most of which were navigated by Cuban exiles, entered the port of Camarioca to bring relatives to the United States.”⁷ Cuban immigration continued at a relatively rapid pace after 1965.⁸ On December 1, 1965, the United States instituted an airlift, by which some 4,000 Cubans were arriving monthly at the time of the passage of the CAA in Congress.⁹

By passing the CAA, Congress intended to “ease the administrative burden” on foreign-based United States consulates and Cuban immigrants, to “integrate” the incoming Cubans “into the American workforce,” to “provide refuge to victims of communist persecution,” and to further the United States’ “ideological war against communism.”¹⁰ Although scholars have put forth arguments concluding that the CAA is no longer justified by its original goals,¹¹ this paper argues that the CAA *is* still justified. While several human rights concerns sim-

¹ Cuban Adjustment Act of 1966, Pub. L. No. 89-732 (1966) (codified with some differences in language at 8 U.S.C.A. § 1255 (West 2012)).

² Joyce A. Hughes & Alexander L. Alum, *Rethinking the Cuban Adjustment Act and the U.S. National Interest*, 23 ST. THOMAS L. REV. 187, 194-95 (2011).

³ Note, *The Cuban Adjustment Act of 1966: ¿Mirando por los Ojos de Don Quijote o Sancho Panza?*, 114 HARV. L. REV. 902, 904 (2001) [hereinafter *Don Quijote*].

⁴ See *id.*; see also Hughes & Alum, *supra* note 2, at 194. A discussion of the Cuban Missile Crisis is beyond the scope of this paper. Please see the two sources cited in this footnote for a brief relation of the incident and additional sources.

⁵ Hughes & Alum, *supra* note 2, at 189-90.

⁶ *Id.* at 194; see also *Don Quijote*, *supra* note 3, at 904.

⁷ *Don Quijote*, *supra* note 3, at 904.

⁸ H.R. REP. NO. 89-1978, at 2 (1966), reprinted in 1966 U.S.C.C.A.N. 3792, 3793-94; see also Hughes & Alum, *supra* note 2, at 195.

⁹ H.R. REP. NO. 89-1978, at 2.

¹⁰ Hughes & Alum, *supra* note 2, at 196-99; accord *Don Quijote*, *supra* note 3, at 908-11.

¹¹ See, e.g., Hughes & Alum, *supra* note 2; *Don Quijote*, *supra* note 3.

ilar to those in Cuba exist in other Latin American countries, Cuba is unique in the degree to which it politically represses its people. The CAA is still valid in light of the Cuban government's restriction of its people's "right to change their government."¹² The right to change one's government means the right to elect to chief executive and law-making offices members of political parties other than the one currently in power.¹³

This paper compares human rights conditions in Cuba to those in Honduras and Venezuela. Additionally, the paper recognizes the rising similarities between Venezuela and Cuba¹⁴ and explores two alternative immigration policies that might be enacted with respect to Venezuela or any other Latin American country should it become sufficiently like Cuba to warrant similar treatment. These issues are important in light of the current debate on illegal immigration into the United States.

This paper differs from other papers written on the CAA in that it does not discuss the "Wet Foot/Dry Foot" policy,¹⁵ perceived racial discrimination under the CAA,¹⁶ or the roots of the CAA.¹⁷ Instead, it surveys human rights information from multiple sources, including the United States Department of State's Country Conditions reports re-

¹² United States Department of State, *Cuba*, 2010 COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES 1 (Apr. 8, 2011), <http://www.state.gov/documents/organization/160160.pdf> [hereinafter *Cuba*].

¹³ See *id.* at 21; United States Department of State, *Honduras*, 2010 COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES 25 (Apr. 8, 2011), <http://www.state.gov/documents/organization/160459.pdf> [hereinafter *Honduras*]; United States Department of State, *Venezuela*, 2010 COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES 42 (2010), <http://www.state.gov/documents/organization/160483.pdf> [hereinafter *Venezuela*].

¹⁴ See, e.g., Tom Brown, *Venezuelans, Fleeing Chavez, Seek U.S. Safety Net*, THOMSON REUTERS (July 15, 2007), <http://www.reuters.com/article/2007/07/15/us-usa-venezuela-asylum-idUSN1127066720070715>; Will Grant, *Concern Over Cuba's Role in Venezuela*, BBC NEWS (June 23, 2010), <http://www.bbc.co.uk/news/10344990>.

¹⁵ Hughes & Alum, *supra* note 2, at 207-09. The Wet Foot/Dry Foot policy, in a nutshell, is that the United States Coast Guard "interdicts" all Cubans found at sea traveling to the United States to immigrate illegally, and repatriates them. *Id.* at 206-09. Meanwhile, should any Cuban land in the United States, that Cuban will be paroled with the opportunity to adjust status under the CAA. *Id.* at 207-09. For more information on this policy see Roland Estevez, Note, *Modern Application of the Cuban Adjustment Act of 1966 and Helms-Burton: Adding Insult to Injury*, 30 HOFSTRA L. REV. 1273, 1290-92 (2002); Javier Talamo, Note, *The Cuban Adjustment Act: A Law Under Siege?*, 8 ILSA J. INT'L & COMP. L. 707, 716-17 (2002).

¹⁶ See, e.g., Malissa Lennox, Note, *Refugees, Racism, and Reparations: A Critique of the United States' Haitian Immigration Policy*, 45 STAN. L. REV. 687 (1993).

¹⁷ See *Don Quijote*, *supra* note 3.

garding the three countries, Amnesty International's on-line articles, and Human Rights Watch's on-line articles, in order to compare the conditions citizens of each country experience and determine whether the United States ought to extend immigration privileges granted to Cubans through the CAA to citizens of other Latin American countries who endure similar human rights conditions.¹⁸ Cuba, Venezuela, and Honduras were chosen because they represent different points along the spectrum of human rights challenges, particularly as they relate to the opportunity to change governments.¹⁹

II. THE CUBAN ADJUSTMENT ACT AND TREATMENT OF CUBAN IMMIGRANTS

As noted above, the CAA was enacted in response to the huge 1965 influx of Cuban immigrants,²⁰ who faced the prospect of a slow and costly immigration process.²¹ The CAA provided (and still provides) Cubans already within the United States with the benefit of being able to obtain legal status in the United States without having to travel abroad to apply for an immigrant visa at a foreign United States consulate²² or having to meet the qualifications for "refugee status."²³ Both are the more common methods of obtaining legal permanent resident status.²⁴ Previously, Cubans had been allowed to enter to the United States legally by virtue of the "parole power,"²⁵ which is a tem-

¹⁸ Cf. Estevez, *supra* note 15, at 1292-95 (surveying human rights conditions in Cuba as one current justification for the CAA, and later conducting a brief comparison of Cuba, Haiti, and Mexico to show that the CAA is justified because Cuba differs from Haiti and Mexico in that it does not have the benefit of diplomatic or trade relations with the United States).

¹⁹ See *Cuba*, *supra* note 12, at 1; *Honduras*, *supra* note 13, at 25; *Venezuela*, *supra* note 13, at 42.

²⁰ Hughes & Alum, *supra* note 2, at 196.

²¹ *Id.* at 194-97.

²² Cf. H.R. REP. NO. 89-1978, at 3 (1966), reprinted in 1966 U.S.C.C.A.N. 3792, 3794; compare Cuban Adjustment Act of 1966, Pub. L. No. 89-732 § 1 with 8 U.S.C.A. § 1181(a) (West 2012) and 22 C.F.R. § 42.62 (West 2012); see also Hughes & Alum, *supra* note 2, at 196-97.

²³ Compare Cuban Adjustment Act § 1 with 8 U.S.C.A. § 1157(c) (West 2012); see also Hughes & Alum, *supra* note 2, at 188.

²⁴ 8 U.S.C. §§ 1157(c), 1159, 1181(a) (West 2012); see also MARC R. GENERAZIO, IMMIGRATION LAW: A GUIDE TO LAWS AND REGULATIONS 1-2, 23-24 (2011) (explaining that one may obtain legal status in the United States by obtaining an immigrant visa or by adjusting status once in the United States, and further explaining that one may come to the United States as a refugee or asylee). Once a refugee or asylee is in the United States, he or she can adjust status pursuant to 8 U.S.C. § 1255 (2006).

²⁵ Hughes & Alum, *supra* note 2, at 195-96.

porary measure to be used “for urgent humanitarian reasons or significant public benefit.”²⁶ However, there was no legal provision by which Cubans could obtain long-term authorization to live in the United States without undergoing “the awkward procedure of leaving the United States for an indefinite period of time in order to secure an immigrant visa at a U.S. consular office abroad and then reentering as a permanent resident.”²⁷ This was so because the United States had severed diplomatic relations with Cuba, so Cubans had no way of applying for an immigrant visa in Cuba.²⁸

By passing the CAA, Congress hoped to meet four objectives: “(1) [to] ease the administrative burden of Cuban exiles who wanted to become legal permanent residents; (2) [to] integrate Cuban exiles into the American workforce; . . . (3) [to] provide refuge to victims of communist persecution;” and (4) “to further U.S. efforts in the ideological war against communism.”²⁹

Currently, Cubans can change their status to legal permanent resident (“LPR”) relatively easily.³⁰ So long as they have not disqualified themselves, United States Citizenship and Immigration Services (“USCIS”) has a policy of granting parole to the Cuban immigrants that arrive on American soil.³¹ This is true even though they may have arrived in the United States illegally or may be likely to become “public charges,” both of which are causes for ineligibility for “admission” under the Immigration and Nationality Act (“INA”).³² Once paroled, the CAA makes Cubans eligible for the Attorney General to exercise his discretion in their behalf to change their status to LPR.³³

²⁶ 8 U.S.C.A. § 1182(d)(5)(A) (West 2012).

²⁷ H.R. REP. NO. 89-1978, at 2.

²⁸ See *id.* at 1 (stating that the United States had severed diplomatic relations with Cuba); see also Hughes & Alum, *supra* note 2, at 210 (arguing that with the advent of the United States Interest Section in Cuba, the underlying rationale of the CAA having to do with “easing the administrative burden on Cuban parolees” became obsolete).

²⁹ Hughes & Alum, *supra* note 2, at 196.

³⁰ *Id.* at 207-09; *Don Quijote*, *supra* note 3, at 920.

³¹ See 8 U.S.C.A. § 1182(a) (setting forth grounds for ineligibility) (West 2012); Memorandum from Doris Meissner, Comm’r, U.S. Immigr. and Naturalization Serv., to INS Regional Directors et al. (Apr. 19, 1999) (on file with the U.S. Dep’t of Health and Human Servs.) (*available at* <http://www.acf.hhs.gov/programs/orr/policy/sl07-14.htm>) [hereinafter Meissner Memo]; see also Hughes & Alum, *supra* note 2, at 207-09.

³² 8 U.S.C.A. § 1182(a)(4), (6) (West 2012); Hughes & Alum, *supra* note 2, at 207-08.

³³ Cuban Adjustment Act of 1966, Pub. L. No. 89-732, § 1 (1966) (codified with some differences in language at 8 U.S.C.A. § 1255); see also Hughes & Alum, *supra* note 2, at 214.

III. METHODS OF OBTAINING LEGAL PERMANENT RESIDENT STATUS FOR LATINOS FROM OTHER COUNTRIES

People from other countries have five general possibilities for legal entry into the United States: (1) a family member is a United States citizen; (2) an employer sponsors the immigrant; (3) the immigrant qualifies for diversity immigration;³⁴ (4) qualifying as a special immigration case;³⁵ and (5) meeting the requirements for refugee or asylee status.³⁶ Although there are several different ways to obtain an immigrant visa, most of them are difficult to obtain. Visas for the first three categories are subject to annual quotas.³⁷ In addition to the numerical limitation, other criteria restrict who may qualify for “employment-based” immigrant visas, such as “extraordinary ability,” being “[o]utstanding professors [or] researchers,” managers or executives of companies, holding an advanced degree, or being skilled laborers.³⁸ Diversity immigration is limited to people from countries with relatively low admission rates into the United States,³⁹ and also includes a minimum “education or work experience” requirement.⁴⁰ The education or work experience requirement provides that diversity immigrants must have “at least a high school education or its equivalent, or . . . at least 2 years of work experience in an occupation which requires at least 2 years of training or experience.”⁴¹ In 2004, “most of the immigrants admitted under the diversity program: 41 percent and 38 percent, respectively,” were from African or European countries.⁴² Thus, if a non-Cuban Latino does not have an immediate family member in the United States, is not educated or skilled, or does not qualify as a refugee, he would have a difficult time entering the United States legally. Cubans, on the other hand, not only may apply for immigrant visas and refugee status in their home country, but as long as they ar-

³⁴ 8 U.S.C.A. § 1151(a) (West 2012); GENERAZIO, *supra* note 24, at 2, 23-28.

³⁵ GENERAZIO, *supra* note 24, at 23-28; *see also* 8 U.S.C.A. § 1101(a)(27) (West 2012) (defining “special immigrant” for the purposes of the Immigration and Nationality Act).

³⁶ 8 U.S.C.A. §§ 1101(a)(42), 1151(a) (West 2012); GENERAZIO, *supra* note 24, at 2, 23-28.

³⁷ GENERAZIO, *supra* note 24, at 2.

³⁸ 8 U.S.C.A. § 1153(b) (West 2012).

³⁹ *Id.* § 1153(c)(1).

⁴⁰ *Id.* § 1153(c)(2).

⁴¹ *Id.*

⁴² Cong. Budget Office, *Immigration Policy in the United States*, (Feb. 26, 2006), <http://www.cbo.gov/ftpdocs/70xx/doc7051/02-28-Immigration.pdf>.

rive on United States soil, they are practically guaranteed parole and LPR status.⁴³

The difference in treatment of Cubans and non-Cubans begs the question: is this fair? To determine whether the CAA creates an inequity as to Latin Americans from countries other than Cuba, this paper will consider human rights conditions of the three countries chosen as sample countries: Cuba (here roughly the equivalent of a control sample in scientific experiments), Venezuela, and Honduras.

IV. AN OVERVIEW OF CONDITIONS IN CUBA, VENEZUELA, AND HONDURAS

a. *Cuba*

“Cuba . . . is a totalitarian state”⁴⁴ There is only one legal political party under the Cuban Constitution, the Communist Party.⁴⁵ The Communist Party holds 607 out of 614 seats in the nation’s legislature, the National Assembly.⁴⁶ Fidel Castro was the leader of Cuba from the time of the revolution he implemented in 1959 until 2008, a span of almost fifty years.⁴⁷ He “exercised control over virtually all aspects of Cuban life through the Communist Party and its affiliated mass organisations [sic], the government bureaucracy and the state security apparatus.”⁴⁸ His younger brother, Raul, has been president since 2008.⁴⁹

The Communist Party tightly controls the media in Cuba.⁵⁰ All media providers must avoid “anti-government propaganda and the insulting of officials”⁵¹ or face prison sentences, reported as being “up to three years” in length.⁵²

The government directly owned and the CP controlled all print and broadcast media outlets and did not allow editorial independence. News and information programming was nearly uniform across all outlets. Controls on information were so tight that even the state-run media complained at times, as evidenced by an op-ed that appeared briefly on the

⁴³ Hughes & Alum, *supra* note 2, at 210.

⁴⁴ *Cuba*, *supra* note 12, at 1.

⁴⁵ *Id.*; see also CONSTITUCIÓN DE LA REPÚBLICA DE CUBA Feb. 24, 1976, Ch. 1, Art. 5.

⁴⁶ *Cuba*, *supra* note 12, at 21.

⁴⁷ *Cuba Country Profile*, BBC NEWS (Nov. 25, 2011, 11:54 GMT), http://news.bbc.co.uk/2/hi/americas/country_profiles/1203299.stm.

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.*

CP Youth newspaper's website before being pulled down. The government also controlled nearly all book publications, requiring CP approval before materials could go to press.⁵³

The United Nations has called on Cuba to allow for greater "freedom of expression."⁵⁴ The call has largely gone unheeded, evidenced by the fact that Cuba detained without charge eleven people opposed to the government on August 28, 2011.⁵⁵ Reportedly 1.6 million Cubans were using the Internet in 2009.⁵⁶ Representatives of the Catholic Church appear to be the only ones immune from punishment for criticizing the government.⁵⁷ Human rights activists face frequent harassment, arrests, and threats from government security officials.⁵⁸ One human rights activist was detained for four days without being able to contact his family to tell them where he was.⁵⁹

While the Cuban government provides harsh sentences to dissident members of the media and the press, it apparently has not perpetrated unlawful killings or the disappearance of its opponents.⁶⁰ Whether this represents restraint on the Cuban government's part or simply a preference for detentions is unclear. "The government continued to refuse international humanitarian organizations access to political prisoners, although many political prisoners were able to communicate information about their living conditions through phone calls to human rights observers and reports to family members."⁶¹ Detentions in Cuban prisons can include "selective denial of medical care."⁶²

⁵³ *Cuba*, *supra* note 12, at 14.

⁵⁴ *Cuba Country Profile*, *supra* note 47.

⁵⁵ *Document – Cuba: Dissidents Arrested in Cuba*, AMNESTY INTERNATIONAL (Sept. 1, 2011), <http://www.amnesty.org/en/library/asset/AMR25/005/2011/en/f1325a4e-4f3e-458d-84f4-679d41d6ab6b/amr250052011en.html>.

⁵⁶ FREEDOM HOUSE, *FREEDOM ON THE NET 2011: A GLOBAL ASSESSMENT OF INTERNET AND DIGITAL MEDIA*, 109-10 (Sanja Kelly and Sarah Cook eds., Apr. 18, 2011), available at <http://www.freedomhouse.org/report/freedom-net/freedom-net-2011>.

⁵⁷ *Cuba*, *supra* note 12, at 15.

⁵⁸ OBSERVATORY FOR THE PROTECTION OF HUMAN RIGHTS DEFENDERS, *CUBA: ANNUAL REPORT 2011*, 200-01 (2011), available at <http://www.unhcr.org/refworld/pdfid/4ea7b3f25.pdf>.

⁵⁹ *Id.* at 201-02.

⁶⁰ *Cuba*, *supra* note 12, at 2. *Cf. Honduras*, *supra* note 13, at 2-10; *Venezuela*, *supra* note 13, at 1-8 (alleging that state security forces perpetrated unlawful killings and kidnappings).

⁶¹ *Cuba*, *supra* note 12, at 13.

⁶² *Id.* at 1.

Thus, while the Cuban government does not engage in politically motivated killings, it does suppress opposition to the government by controlling the media and threatening, arresting, and harassing dissidents.

b. *Venezuela*

“Venezuela is a multiparty constitutional democracy”⁶³ Hugo Chavez Frias has been president for a tumultuous thirteen years.⁶⁴ The federal legislature, for a time composed entirely of Chavez loyalists due to most opposition candidates’ boycott of the 2005 election,⁶⁵ is now made up of ninety-eight members of Chavez’s party, sixty-five opposition party members, and two members of a third party.⁶⁶ However, between September 26, 2010, the date of the most recent legislative elections, and January 5, 2011, the date the newly elected representatives were to take office, Chavez supporters used a constitutional maneuver to grant Chavez the power to legislate by decree for eighteen months.⁶⁷ This maneuver “effectively marginaliz[ed] the legislative power of the newly-elected opposition deputies,” and “[n]early all notable legislation enacted since January 2011 has been through presidential decree.”⁶⁸ Chavez openly seeks to create a “21st Century socialist revolution,”⁶⁹ calling for “socialism, socialism and more socialism.”⁷⁰ His party has been described as “creating a ‘communal’ state.”⁷¹

President Chavez has obtained increasing control over the media. Although “Venezuela’s many private broadcasters operate alongside state-run radio and TV,” accusations of the politicization of the media have flown at both sides of the political debate.⁷² “President Chavez has been accused of creating an intimidatory climate for journalists,

⁶³ *Venezuela*, *supra* note 13, at 1.

⁶⁴ Bureau of Western Hemisphere Affairs, *Background Note: Venezuela*, U.S. DEPARTMENT OF STATE (Sept. 2, 2011), <http://www.state.gov/r/pa/ei/bgn/35766.htm> [hereinafter *Background Note: Venezuela*].

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ Brown, *supra* note 14; *see also Venezuela Country Profile*, BBC NEWS (July 16, 2011, 19:19 GMT), http://news.bbc.co.uk/2/hi/americas/country_profiles/1229345.stm.

⁷⁰ Mary Anastasia O’Grady, *Chavez’s 40-Year Plan to Conquer Vice*, WALL ST. J., Dec. 5, 2011, at A15.

⁷¹ *Background Note: Venezuela*, *supra* note 64. *But see Venezuela Country Profile*, *supra* note 69 (stating that because Chavez’s party did not obtain a “two-thirds majority,” it is not able “to pass his legislative agenda without the support of his opponents”).

⁷² *Venezuela Country Profile*, *supra* note 69.

while some private media have been accused of being involved in the opposition movement against him.”⁷³ “Amnesty International has long received reports of Venezuelan journalists and media workers being subjected to intimidation and threats because of their work in recent years. Several media outlets critical of the government have not been awarded licenses to operate.”⁷⁴ Those who insult the president and other government officials face prison time and fines, with prison time for “insulting the president” ranging from “six to 30 months” and sentences decreasing in time for insulting lesser officials.⁷⁵ Internet access is widespread, but government regulations on its use have begun to creep in.⁷⁶

Although the government did not engage in political killings in 2010, unlawful killings involving State security forces beset the country, with one non-governmental organization (“NGO”) tallying “237 deaths due to security force action from October 2009 through September 2010.”⁷⁷

Venezuela seems to be somewhere on the path between democracy and totalitarianism. The domestic political opposition to President Chavez did gain about forty percent of the seats in the National Assembly in last years’ elections,⁷⁸ but before the opposition representatives could take office, the exiting pro-Chavez legislature granted the president authority to rule by decree for eighteen months.⁷⁹ The pro-Chavez legislature also passed two other controversial laws: one restricts the freedom of members of the National Assembly to vote according to their conscience and the other “reduces the amount of time a deputy can speak on the floor, lowers the threshold necessary to sanction a deputy for violating the rules of debate, and restricts access by private television media to the National Assembly.”⁸⁰ The above three actions crippled the incoming National Assembly and strengthened the president.⁸¹

⁷³ *Id.*

⁷⁴ *Document – Freedom of Expression Under Attack in Venezuela*, AMNESTY INTERNATIONAL (Oct. 20, 2011), <http://www.amnesty.org/en/library/asset/AMR53/009/2011/en/bc1c6180-c11a-4ccf-a45e-34c5f42a2484/amr530092011en.html>.

⁷⁵ *Venezuela*, *supra* note 13, at 25.

⁷⁶ *Id.* at 36-37.

⁷⁷ *Id.* at 1-2.

⁷⁸ *Id.* at 42.

⁷⁹ *Id.* at 42-43.

⁸⁰ *Id.* at 43-44.

⁸¹ *See id.* at 42-44; *see also Background Note: Venezuela*, *supra* note 64.

Beyond action in domestic politics suggesting a move towards totalitarianism, international cooperation between Venezuela and Cuba raises a red flag as to the possibility of Venezuela moving towards the communist “Cuban model” of governance.⁸² Venezuela has “thousands of Cuban medics and teachers” working within its borders.⁸³ Venezuela also has Cuban “agricultural advisors” and, perhaps most significantly, “Cuban advisors . . . in [Venezuela’s] military.”⁸⁴ These advisors are working in highly sensitive areas of Venezuela’s national security.⁸⁵ President Chavez has attempted to dispel fears caused by such intimate cooperation by saying, “[e]verything Cuba does for us is to strengthen the fatherland.”⁸⁶

Another international development involving Venezuela that suggests it is moving toward totalitarianism is the Venezuelan Supreme Court’s rejection of “a binding decision by the Inter-American Court of Human Rights in the case of an opposition politician.”⁸⁷ A Human Rights Watch official stated, “[t]he Venezuelan Supreme Court today basically belongs to President Chávez . . . [and] [e]ver since his supporters packed the court in 2004, its rulings have repeatedly sought to protect the president’s political agenda, not to uphold basic human rights.”⁸⁸

Thus, the Venezuelan people remain free to change their government by electing whom they choose to the highest positions of political decision-making. Nevertheless, developments such as the legislature granting President Chavez the authority to rule by decree, the government increasing its control of the media, Cuban influence in the Venezuelan military and other sectors, and the Supreme Court’s rejection of a decision by the Inter-American Court of Human Rights indicates that Venezuela is becoming more authoritarian.

⁸² Grant, *supra* note 14.

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ *Venezuela: Supreme Court Disregards Rights in Election Case*, HUMAN RIGHTS WATCH (Oct. 18, 2011), <http://www.hrw.org/news/2011/10/18/venezuela-supreme-court-disregards-rights-election-case>.

⁸⁸ *Id.*

c. *Honduras*

“Honduras is a constitutional multiparty republic.”⁸⁹ After the ouster of President José Manuel “Mel” Zelaya Rosales in what was dubbed a *coup d'état* in 2009,⁹⁰ Hondurans elected a new president, Porfirio “Pepe” Lobo.⁹¹ Although reports appear to conflict regarding voter participation in the November 2009 election in which President Lobo was chosen, the BBC puts voter turnout at sixty percent.⁹² President Lobo reportedly garnered “the largest number of votes for a presidential candidate in Honduran history.”⁹³ The legislature, which is called the National Congress, includes representatives of five different political parties: the Liberal Party, the National Party, the Innovation and Social Democratic Unity Party, and the Democratic Unification Party.⁹⁴ The Liberal Party and the National Party are the major parties, with the other three “hold[ing] a few seats each in the Congress.”⁹⁵

Politically motivated human rights deprivations escalated during the interim government between the coup and the inauguration of President Lobo,⁹⁶ including “excessive use of force, unlawful killings, arbitrary detention, torture and other ill-treatment.”⁹⁷ Since then, multiple people who were involved in the anti-coup resistance movement have been murdered.⁹⁸ Subsequent government investigations have generally indicated that the killings were not politically motivated.⁹⁹ Amnesty International reports that a community leader was

⁸⁹ *Honduras*, *supra* note 13, at 1.

⁹⁰ Bureau of Western Hemisphere Affairs, *Background Note: Honduras*, U.S. DEPARTMENT OF STATE (Sept. 12, 2011), <http://www.state.gov/r/pa/ei/bgn/1922.htm> [hereinafter *Background Note: Honduras*].

⁹¹ *Honduras*, *supra* note 13, at 1.

⁹² *Honduras Country Profile*, BBC NEWS (Nov. 2, 2011), http://news.bbc.co.uk/2/hi/americas/country_profiles/1225416.stm.

⁹³ *Background Note: Honduras*, *supra* note 90. *Compare id.* (claiming that the election “attracted broad voter participation. Lobo received the largest number of votes for a presidential candidate in Honduran history.”), with *Honduras: Amnesty International submission to the UN Universal Periodic Review*, AMNESTY INTERNATIONAL, 3 (Apr. 19, 2010), <http://www.amnesty.org/en/library/asset/AMR37/005/2010/en/79e58f10-220d-40ff-ab81-464b56aa439b/amr370052010en.pdf> (claiming that “abstention was reportedly very high” in the election).

⁹⁴ *Background Note: Honduras*, *supra* note 90.

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ *Honduras: Amnesty International submission to the UN Universal Periodic Review*, *supra* note 93, at 3.

⁹⁸ *See Honduras*, *supra* note 13, at 2-4, 6.

⁹⁹ *See id.*

abducted on August 30, 2011 and has yet to be released.¹⁰⁰ “[N]o ransom has been requested and [the family] suspect[s] police involvement,” the family said.¹⁰¹

The government did not interfere with the media once President Lobo took office, allowing even for the freedom to criticize the government.¹⁰² “[U]nknown actors killed ten journalists and intimidated other members of the media” in 2010, but President Lobo pledged to investigate the killings fully.¹⁰³

V. COMPARING THE COUNTRIES’ CIRCUMSTANCES

This paper will now compare and contrast the current conditions of Cuba with those of Venezuela and Honduras. The objective of this section of the paper is to show that, even though Congress has not provided easy standards of immigration like those of the CAA for citizens of Venezuela and Honduras, who admittedly suffer distressing political and human rights conditions, Venezuelans, Hondurans and citizens of other Latin American countries do not suffer an inequity due to the CAA. This section of the paper argues that because Venezuelans and Hondurans (and citizens of other similarly situated Latin American countries) are free to change their government through the power of the ballot, they are not in as great need as are Cubans for the political benefits of being legally admitted to the United States. Cubans do not have the freedom to change their government, and therefore should continue to receive special treatment.

As noted above, Venezuela and Honduras are both democratic nations where citizens have the right to vote and change their government by ballot.¹⁰⁴ The most recent elections in both countries are reported to have been “free and fair.”¹⁰⁵ One report notes Honduras’s inclusiveness of women and minorities in its government.¹⁰⁶ Hondurans also engaged in the 2009 presidential elections in strong numbers.¹⁰⁷ Venezuelans recently voted into office sixty-five opposi-

¹⁰⁰ *Fears for Safety of Community Leader Abducted in Honduras*, AMNESTY INTERNATIONAL (Oct. 11, 2011), <http://www.amnesty.org/en/news-and-updates/fears-safety-community-leader-abducted-honduras-2011-10-11>.

¹⁰¹ *Id.*

¹⁰² *Honduras*, *supra* note 13, at 19.

¹⁰³ *Id.*

¹⁰⁴ *See id.* at 1, 25; *Venezuela*, *supra* note 13, at 1, 42.

¹⁰⁵ *Honduras*, *supra* note 13, at 25; *Venezuela*, *supra* note 13, at 42.

¹⁰⁶ *Honduras*, *supra* note 13, at 25-26.

¹⁰⁷ *Honduras Country Profile*, *supra* note 92.

tion legislators, or forty percent (40%) of their National Assembly.¹⁰⁸ Although some have raised the concern that the Chavez government is denying some of its opponents the right to run for office through corrupt legal action,¹⁰⁹ in a 2007 referendum, Venezuelans rejected Chávez's bid "to extend his powers and accelerate his socialist revolution."¹¹⁰ "While the socialist party of Mr [sic] Chavez still controls the assembly it missed out on the two-thirds majority which would have given him the freedom to pass his legislative agenda without the support of his opponents."¹¹¹ Thus, Venezuela and Honduras exhibit the ability of their people to change their governments by the ballot.¹¹²

The above descriptions of democratic opportunity contrast starkly with Cuba's political oppression.¹¹³ By the Constitution, no political party other than the Communist Party may exist in Cuba.¹¹⁴ Local municipal council members need not be members of the Communist Party to hold office,¹¹⁵ but local electoral commissions are composed of people "regarded as loyal to Cuba's revolutionary ideals and its present leadership," and those who select candidates for the National Assembly consider prospective candidates' "revolutionary history."¹¹⁶ In practice, "Cubans . . . consistently tend to elect members who have significant ranking within the regime."¹¹⁷ While Cubans may choose not to vote,

¹⁰⁸ *Venezuela*, *supra* note 13, at 42.

¹⁰⁹ *See Venezuela: Supreme Court Disregards Rights in Election Case*, *supra* note 87; *Venezuela*, *supra* note 13, at 44.

¹¹⁰ *Venezuela Country Profile*, *supra* note 69. Note, however, that "President Chavez has since passed some of the changes defeated in the referendum by presidential decree or legislation." *Background Note: Venezuela*, *supra* note 64.

¹¹¹ *Venezuela Country Profile*, *supra* note 69.

¹¹² *Honduras*, *supra* note 13, at 25-26; *Venezuela*, *supra* note 13, at 42-45.

¹¹³ *See Cuba*, *supra* note 12, at 1 (stating that "[t]he constitution recognizes the Communist Party (CP) as the only legal party and 'the superior leading force of society and of the state'").

¹¹⁴ *See* CONSTITUCIÓN DE LA REPÚBLICA DE CUBA, ch. I, art. 5 ("El Partido Comunista de Cuba . . . es la fuerza dirigente superior de la sociedad y del Estado." Translation: "The Communist Party of Cuba . . . is the superior guiding force of society and the State."); *Cuba*, *supra* note 12. *See also* Ruben Sierra, *Cuba Votes as Fidel Castro Steps Down*, WORLD-PRESS.ORG (Feb. 21, 2008), http://worldpress.org/print_article.cfm?article_id=3197&dont=yes. The commentator, an apologist of the Cuban political system, argued that fear of meddling by the United States prevents the Cuban government from recognizing opposition groups.

¹¹⁵ Ministry of Foreign Affairs of Cuba, "Raul Castro Calls Cuban Elections," *Elections, Cuban Style* (July 10, 2007), available at http://www.cubaminrex.cu/english/Focus_On/2007/Elections.htm. *See also Cuba*, *supra* note 12, at 22.

¹¹⁶ Sierra, *supra* note 114 (internal quotation marks omitted). *See also Cuba*, *supra* note 12, at 21-22.

¹¹⁷ Sierra, *supra* note 114.

those who exercise this right may be subject to public embarrassment and a fine.¹¹⁸ An electoral commission approves only one candidate per seat in the National Assembly.¹¹⁹ The Council of State, the vice president, and the president are voted in by the National Assembly rather than by the common voter.¹²⁰

The most telling piece of information about the lack of freedom under which Cubans operate regarding elections is found in the opening line of the 1992 *Ley electoral* (Electoral Law), which reads, “WHEREFORE: The Fourth Congress of the Cuban Communist Party approved . . . a group of recommendations directed at transforming the electoral system”¹²¹ The fact that it was the Communist Party of Cuba that passed the law shows the position of the Party in Cuban elections: it makes the law. The likelihood that the Communist Party of Cuba would pass a law by which it could be voted out of power seems very low.¹²²

Beyond controlling elections in favor of the Communist Party, the Cuban government suppresses political debate. For example, “[f]our people were sentenced on May 31, 2011, in Havana for distributing pamphlets criticizing Raúl and Fidel Castro, and two human rights defenders in Holguín were sentenced on May 24, charged with ‘insulting national symbols’ and ‘disorder’ for public acts that they denied had taken place.”¹²³ These six people received “sentences ranging from two to five years in prison.”¹²⁴ In another instance, Cuban security forces arrested eleven men who were part of a group of dissidents gathered to discuss the government’s recent crackdown against other dissidents.¹²⁵ These men were held without charge starting on August 28, 2011.¹²⁶ Cuban officials contacted the families of seven of the men on September 7, 2011, to inform them that these seven were being held for “pub-

¹¹⁸ *Id.*

¹¹⁹ *Id.*

¹²⁰ *Id.*

¹²¹ *Ley electoral* (1992), available at http://www.cubaminrex.cu/mirar_cuba/La_isla/ley_electoral.htm. The law reads as follows: “POR CUANTO: El Cuarto Congreso del Partido Comunista de Cuba aprobó . . . un grupo de recomendaciones dirigidas a transformar el sistema electoral”

¹²² “And if a house be divided against itself, that house cannot stand.” *Mark* 3:25.

¹²³ *Cuba: Stop Imprisoning Peaceful Dissidents*, HUMAN RIGHTS WATCH (June 1, 2011), <http://www.hrw.org/news/2011/06/01/cuba-stop-imprisoning-peaceful-dissidents>.

¹²⁴ *Id.*

¹²⁵ *Document – Cuba: Dissidents Arrested in Cuba*, *supra* note 55.

¹²⁶ *Id.*

lic disorder and creating a public commotion.”¹²⁷ Six of those seven men were released in November 2011.¹²⁸ The last of those seven and the remaining four of the original eleven dissidents who were arrested presumably remain in custody at this writing.¹²⁹ The above are just two examples among many of government restrictions on political discussion contrary to the Communist Party of Cuba.¹³⁰

The foregoing paragraphs demonstrate the fundamental difference between conditions in Cuba and those in Honduras and Venezuela. Although citizens of all three countries face some similar human rights conditions, the power of the people to determine who will lead their country differs vastly. Cuba maintains a single political party,¹³¹ which stifles political debate¹³² and tightly controls elections.¹³³ Contrariwise, Honduras allows for arguably robust political participation and debate.¹³⁴ Venezuela lies somewhere in between, but as noted above, the opposition to the party in power has demonstrated its vitality in recent elections.¹³⁵ Therefore, Cubans do merit different treat-

¹²⁷ Marc R. Masferrer, *Miguel Rafale Cabrera Montoya, Alexis Kuan Jerez, Víctor Campa Almenares, Nivaldo Amelo Ramírez, José Enrique Martínez Ferrer, Alexei Aguirresabal Rodríguez, and Bismarck Mustelíer Galán, Cuban Political Prisoners of the Week, 9/11/11*, UNCOMMON SENSE (Sept. 10, 2011), http://marcmasferrer.typepad.com/uncommon_sense/2011/09/prisoners-of-the-week.html.

¹²⁸ Marc R. Masferrer, *6 Cuban Activists Released After More Than 2 Months in Jail*, UNCOMMON SENSE (Nov. 16, 2011), http://marcmasferrer.typepad.com/uncommon_sense/2011/11/6-cuba-activists-released-after-more-than-2-months-in-jail.html.

¹²⁹ *See id.*

¹³⁰ *See, e.g., Activists Held Without Charge*, AMNESTY INTERNATIONAL (Dec. 13, 2011), <http://www.amnesty.org/en/library/asset/AMR25/007/2011/en/9eae79bf-0186-4078-88cb-f55028a36064/amr250072011en.pdf>; *Cuba, supra* note 12, at 3-6 (discussing prison conditions as they relate to political prisoners); *Cuba: Stop Imprisoning Peaceful Dissidents, supra* note 123 (reporting that the mother of one of the four pamphleteers was fired for being “the mother of a counterrevolutionary”).

¹³¹ *Cuba, supra* note 12, at 1; *Sierra, supra* note 114.

¹³² *Cuba: Stop Imprisoning Peaceful Dissidents, supra* note 123; *Document – Cuba: Dissidents Arrested in Cuba, supra* note 55.

¹³³ *Cuba, supra* note 12, at 21-22.

¹³⁴ *See Honduras, supra* note 13, at 19 (“Independent media were active and expressed political views without government restriction, and individuals could criticize the government publicly or privately without government reprisal.”); *Honduras Country Profile, supra* note 92 (stating that the voter turnout in the most recent presidential election was sixty percent, and that thirty-eight percent of the vote went to the candidate who came in second while fifty-six percent went to the successful candidate). *But see Honduras: Amnesty International submission to the UN Universal Periodic Review, supra* note 93, at 3-7 (cataloguing violent deaths among political activists).

¹³⁵ *See, e.g., Venezuela Country Profile, supra* note 69.

ment than do citizens of other countries that come to the United States.

VI. POTENTIAL REMEDIES

This paper argues that Cuban immigrants should receive special treatment compared to immigrants from other Latin American countries, but what special treatment they should receive is a separate question. Scholars have suggested many options in dealing with Cuban immigrants.¹³⁶ For example, one scholar has suggested that the best way to approach the issue is for the United States to end its embargo against Cuba and to cease paroling all Cubans, thus forcing them to seek asylum rather than parole.¹³⁷ This scholar argues that these measures will reduce the number of Cuban economic immigrants, which are able to obtain legal status due to the parole policy towards Cubans and the CAA while economic migrants from other countries have no such opportunity.¹³⁸ Another scholar has suggested that the CAA be repealed or be interpreted differently so that Cuban immigrants no longer have a “free pass” to LPR status.¹³⁹ Yet another scholar argues that the United States should continue to enforce the CAA or take affirmative steps to relieve the economic suffering of the people of Cuba.¹⁴⁰

Related to the issue of how to approach Cuban immigration is the trajectory of Venezuela towards political and human rights circumstances similar to those in Cuba. The following questions, therefore, also arise: Might the time come that Venezuelans, or citizens of other Latin American countries, also merit special treatment? If so, by what standard can we determine that such a time has arrived? Should the United States offer immigrants from all totalitarian communist regimes the same preference shown to Cubans? What should be the United States’ immigration policy towards immigrants from totalitarian communist regimes? Is asylum as it currently is enabled by law a

¹³⁶ See, e.g., Hughes & Alum, *supra* note 2, at 217 (arguing for the repeal of the CAA); Don Quijote, *supra* note 3, at 917-25 (raising the possibility of applying the CAA to all immigrants, repealing the CAA immediately, repealing the CAA later, and reducing the number of Cuban economic migrants through effectively not using the CAA and lifting the embargo against Cuba).

¹³⁷ Don Quijote, *supra* note 3, at 919-20.

¹³⁸ *Id.*

¹³⁹ Hughes & Alum, *supra* note 2, at 217.

¹⁴⁰ Estevez, *supra* note 15, at 1297.

suitable solution? Or, should the CAA be applied to other totalitarian communist regimes?

The author of this paper sees the following as being viable solutions to the above issues: (a) use the CAA for Cubans, Venezuelans, and citizens of other Latin American countries that are similarly situated; (b) extend Temporary Protective Status to the same countries instead of CAA benefits;¹⁴¹ and (c) use asylum as a remedy for Venezuelans. For reasons explained below, the most feasible of these options is probably option (b).

a. *Using the CAA*

Scholars writing on the CAA tend to be writing because they want it repealed.¹⁴² However, one scholar has said, with reference to the embargo against Cuba,¹⁴³

if current policy towards Cuba remains steadfast, the only hope Cuban citizens have to emancipate themselves from their situation remains immigration. It is incumbent upon the United States to provide a safety valve for the pressure cooker its policies create in Cuba, and only the CAA can serve that purpose.¹⁴⁴

¹⁴¹ The author acknowledges the contribution of his wife, Alejandra Zeller, in formulating this idea.

¹⁴² See, e.g., Hughes & Alum, *supra* note 2, at 188, 220; *Don Quijote*, *supra* note 3, at 917-20, 925; Lennox, *supra* note 16, at 724. But see, e.g., Estevez, *supra* note 15, at 1297-98; Talamo, *supra* note 15, at 724.

¹⁴³ The United States has maintained a controversial economic embargo against Cuba for about fifty years. See, e.g., Press Release, General Assembly, Speakers Denounce Cuban Embargo as ‘Sad Echo’ of Failed Cold War Politics; Gen. Assembly, for Twentieth Year, Demands Lifting of Econ. Blockade, U.N. Press Release GA/11162 (Oct. 25, 2011); Hughes & Alum, *supra* note 2, at 193; Estevez, *supra* note 15, at 1286. Each year for the past twenty years, the United Nations has voted on a resolution calling for the end of the blockade, and each year, the majority of nations have voted in favor of ending it. U.N. Press Release GA/11162, *supra* note 143. In 2011, only the United States and Israel voted against the resolution, or in favor of the blockade. *Id.* The embargo has “restricted the ability of American companies to trade with and tourists to visit the island.” *Don Quijote*, *supra* note 3, at 920. As a result, Cubans have suffered limitations on food and medical supplies. *Id.* President Obama eased the embargo by presidential order in January 2011. Ewen MacAskill, *Barack Obama acts to ease US embargo on Cuba*, THE GUARDIAN (Jan. 14, 2011), <http://www.guardian.co.uk/world/2011/jan/15/barack-obama-us-embargo-cuba>. However, “[m]ost Americans are [still] in effect banned from Cuba because it is an offence to spend money on the island.” *Id.* Nevertheless, “[u]nder the changes, students and academic staff, religious groups and others will be free to visit, and educational exchanges are to be promoted;” all United States airports may become authorized to host certain flights to and from Cuba; and individuals are allowed to send up to \$500 to Cubans for limited-purpose use. *Id.*

¹⁴⁴ Estevez, *supra* note 15, at 1297-98.

Another scholar seems to suggest that the United States may be justified in maintaining the CAA when he points out that “Cubans continue to flee Cuba, and the Cuban government continues to violate human rights and other immigrant groups do not benefit by the repeal of the Cuban Adjustment Act.”¹⁴⁵

The United States has a moral duty to receive those adversely affected by its embargo.¹⁴⁶ The current policy surrounding application of the CAA does not injure immigrants from other countries,¹⁴⁷ though it may cause discontent among those who consider themselves similarly situated. As stated previously in this paper, however, Cubans suffer under different political conditions that make them deserving of special treatment. The United States would be amply justified in maintaining the status quo with regards to the implementation of the CAA.

The United States could also apply the CAA to Venezuelans if Venezuela ever became a true totalitarian communist jurisdiction. Although the language of the statute as originally passed makes the CAA applicable only to Cubans,¹⁴⁸ as codified, the statute’s language seems to apply the statute to people from any country.¹⁴⁹ One scholar raises the possibility of the United States “treating all refugees as the CAA currently treats only Cubans.”¹⁵⁰ The author promptly dismisses his own suggestion by pointing out that “limited resources and finite employment opportunities – as well as a subtle, but pervasive, xenophobia – [make] it . . . highly unlikely that Congress will open the borders and allow refugees to enter indiscriminately.”¹⁵¹ Nevertheless, were Congress to apply the CAA only to countries into which totalitarian communism had spread, as totalitarian communism could spread into Venezuela, there would still be a reasonable limitation on immigration. Furthermore, part of the original rationale for the CAA – the “further[ance of] U.S. efforts in the ideological war against commu-

¹⁴⁵ Talamo, *supra* note 15, at 724.

¹⁴⁶ Estevez, *supra* note 15, at 1297-98.

¹⁴⁷ Talamo, *supra* note 15, at 722-24.

¹⁴⁸ See Act of Nov. 2, 1966, Pub. L. No. 89-732, 80 Stat. 1161 (1966) (adjusting the status of Cuban refugees to that of lawful permanent residents of the United States).

¹⁴⁹ See 8 U.S.C.A. § 1255(a) (West 2012) (“The status of an alien who was inspected and admitted or paroled into the United States . . . may be adjusted by the Attorney General . . . to that of an alien lawfully admitted for permanent residence if (1) the alien makes an application for such adjustment, (2) the alien is eligible to receive an immigrant visa and is admissible to the United States for permanent residence, and (3) an immigrant visa is immediately available to him at the time his application is filed.”).

¹⁵⁰ *Don Quijote*, *supra* note 3, at 917.

¹⁵¹ *Id.*

nism” – would be particularly applicable to Venezuela in such a scenario.¹⁵² If the scope of the CAA were still perceived to be too large by applying it to subjects of totalitarian communist regimes globally, the Monroe Doctrine would provide a basis for applying the CAA only to such countries in the Western Hemisphere.¹⁵³

Even so, the potential for opening the “floodgates” to Venezuelan immigration would likely prove to be a political stumbling block to applying the CAA to Venezuelans. The CAA, as applied, grants parole to any Cuban who physically arrives onto United States soil, and who has not made himself inadmissible by acts such as committing crimes.¹⁵⁴ This is significantly different from the immigration policy towards any other Latin American country.¹⁵⁵ Applying the CAA to Venezuela or any other country in the way it is presently applied to Cuba could produce overwhelming numbers of parole and/or change of status applicants for a period of time after the initial passage of such a measure by Congress.¹⁵⁶ At the beginning of 2005, there were reportedly “60,000 [Venezuelans] in Miami alone.”¹⁵⁷ In the 2010 United States Census, 215,023 people reported that they were of Venezuelan descent.¹⁵⁸ Most likely, many of these already enjoy parole, LPR, or citizen status; but presumably there would be a rush of Venezuelans on the USCIS during the first year or more after applying the CAA to Venezuelans. These numbers do not take into account those currently in Venezuela who might hazard the trip to the United States to obtain legal residence here. Thus, the “floodgates” concern would likely be a political stumbling block to applying the CAA to Venezuelans.

¹⁵² Hughes & Alum, *supra* note 2, at 196.

¹⁵³ See President James Monroe, President of the U.S., Message at the Commencement of the First Session of the 18th Congress (The Monroe Doctrine) (Dec. 2, 1823) (transcript available at <http://www.ourdocuments.gov/doc.php?flash=true&doc=23&page=transcript>) (“With the movements in this hemisphere we are of necessity more immediately connected . . .”).

¹⁵⁴ Hughes & Alum, *supra* note 2, at 207-09.

¹⁵⁵ See *Don Quijote*, *supra* note 3, at 915.

¹⁵⁶ As to Congress’s authority to pass such an act, see U.S. CONST. art. I, § 8, cl. 3-4; *Id.* at 905 n.25.

¹⁵⁷ A.M. Mora y Leon, *Venezuela – U.S.: Asylum Seekers Soar 400%*, VCRISIS (Jan. 2, 2005), <http://vcrisis.com/index.php?content=letters/200501021224>.

¹⁵⁸ U.S. CENSUS BUREAU, 2010 CENSUS BRIEFS, THE HISPANIC POPULATION: 2010, TABLE 1 (May 2011), available at <http://www.census.gov/prod/cen2010/briefs/c2010br-04.pdf>.

b. *Extend Temporary Protective Status to Cubans Instead of CAA Benefits*

Scholars have put forth sound – and unsound – reasoning for repealing or amending the CAA.¹⁵⁹ Repealing the CAA would only be a good option if an alternative form of providing special assistance to Cuban immigrants were made available, such as adding Cuba to the list of countries whose citizens are eligible for Temporary Protective Status (“TPS”). TPS is a renewable legal status of short duration granted to immigrants from countries where “conditions in the country . . . temporarily prevent the country’s nationals from returning safely, or in certain circumstances, where the country is unable to handle the return of its nationals adequately.”¹⁶⁰ Descriptions of the country conditions required for adding a country to the list of those eligible for TPS include the following: “Ongoing armed conflict (such as civil war); An environmental disaster (such as earthquake or hurricane), or an epidemic[; or] Other extraordinary and temporary conditions.”¹⁶¹ TPS holders may obtain authorization to work in the United States and permission to travel outside of the United States.¹⁶² They must renew their TPS status periodically.¹⁶³

In some ways, repealing the CAA and granting TPS status would be a step backwards for Cuban immigrants. They would no longer have the special route to LPR status and citizenship that they currently have.¹⁶⁴ This change would be significant in that Cuban immigrants might not feel a sense of permanency in the United States, since TPS status is, as the name suggests, a temporary status.¹⁶⁵ On the other hand, the current administration of the CAA contemplates Cuban immigrants obtaining the temporary status of parolee.¹⁶⁶ Additionally, immigrants admitted pursuant to TPS applications may work, like beneficiaries of the CAA.¹⁶⁷ Thus, although the measure would be explic-

¹⁵⁹ See, e.g., Hughes & Alum, *supra* note 2, at 209-16; *Don Quijote*, *supra* note 3, at 911-25.

¹⁶⁰ USCIS, TEMPORARY PROTECTED STATUS, available at <http://www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3e5b9ac89243c6a7543f6d1a/?vgnextoid=848f7f2ef0745210VgnVCM100000082ca60aRCRD&vgnnextchannel=848f7f2ef0745210VgnVCM100000082ca60aRCRD#Top%20of%20Page>.

¹⁶¹ *Id.*

¹⁶² *Id.*

¹⁶³ See *id.*

¹⁶⁴ See Estevez, *supra* note 15, at 1276.

¹⁶⁵ USCIS, TEMPORARY PROTECTED STATUS, *supra* note 160.

¹⁶⁶ Meissner Memo, *supra* note 31.

¹⁶⁷ Compare USCIS, TEMPORARY PROTECTED STATUS, *supra* note 160 with Cuban Adjustment Act of 1966, and USCIS, GREEN CARD (PERMANENT RESIDENCE), available at <http://>

itly temporary, critical benefits would still accrue to Cubans if granted TPS.

This solution might appeal to those who advocate for the repeal of the CAA on the grounds that the CAA creates an inequity between Cuban immigrants and those of other countries.¹⁶⁸ Pursuant to this solution, Cubans would be treated in the same way as Hondurans, Salvadorans, and those of other countries eligible to apply for TPS status.¹⁶⁹ Since this measure would be temporary, it would reflect the United States' hope that political change will occur in Cuba.¹⁷⁰ The United States would almost certainly harbor the same hope for Venezuela or any other country that adopted a Cuban-like government, and therefore the TPS would be appropriate for Venezuelans and any other country that might follow after Cuba.

c. Asylum as a Remedy for Venezuelans

One possible method of resolving the potential problem of Venezuelans or other Latin Americans fleeing a potential totalitarian communist government is to rely on the current solution: asylum. Over the course of President Chávez's rule, the United States has received fluctuating numbers of applications from Venezuelans for asylum. "In 1998, the year Chavez was first elected, the United States granted political asylum to only 14 Venezuelans . . . [In 2006] the figure was 1,085."¹⁷¹ By 2009, the number had decreased significantly, to only 192 grants of asylum to Venezuelans.¹⁷²

The United States' signing of the United Nations' 1967 Protocol relating to the Status of Refugees committed it to certain international obligations.¹⁷³ Granting asylum, however, is wholly within the prerogative of the United States; in other words, people who leave their home

www.uscis.gov/greencard (stating that LPR status consists of "authorization . . . to work in the United States").

¹⁶⁸ See, e.g., Hughes & Alum, *supra* note 2, at 219-20.

¹⁶⁹ USCIS, TEMPORARY PROTECTED STATUS, *supra* note 160.

¹⁷⁰ See *id.*

¹⁷¹ Christopher Toothaker, *More Venezuelans getting U.S. asylum*, USA TODAY (July 28, 2007), http://www.usatoday.com/news/topstories/2007-07-28-3495637117_x.htm.

¹⁷² U.S. Department of Justice, Executive Office for Immigration Review, FY 2009 Asylum Statistics, *available at* <http://www.justice.gov/eoir/efoia/FY09AsyStats-Current.pdf>.

¹⁷³ KAREN MUSALO ET AL., REFUGEE LAW AND POLICY: A COMPARATIVE AND INTERNATIONAL APPROACH 66 (3d ed.).

country have no right to asylum.¹⁷⁴ The government has discretion in deciding who will benefit from asylum.¹⁷⁵ Asylum is available to individuals who cannot seek the protection of their home country because of a well-founded fear of persecution on account of their race, religion, nationality, political opinion, or membership in a particular social group.¹⁷⁶ Such individuals may exclude themselves from eligibility by, among other things, persecuting others themselves,¹⁷⁷ having “engaged in a terrorist activity”, entering the United States illegally, committing a crime of moral turpitude, or by the likelihood of that person becoming financially dependent on the government.¹⁷⁸

While using asylum creates an administrability issue in that each case would have to be reviewed individually, the United States already handles its asylum requests in this manner.¹⁷⁹ However, this treatment would not rise to the level of special treatment because asylum seekers from every country are treated the same.¹⁸⁰ This treatment would fall short of the special treatment shown Cubans because there would be no automatic parole.¹⁸¹ Thus, similarly situated individuals would be treated differently, creating an inequity.

VII. CONCLUSION

Although other Latin American countries like Venezuela and Honduras have human rights conditions similar to those of Cuba, and in some ways perhaps worse conditions in that security forces in Honduras and Venezuela reportedly participate in unlawful killings and kidnappings while Cuban security forces do not, Cuba still stands out. Cuba’s Communist Party prevents Cubans from changing their government through elections and from forming any other political party. Due to this difference, Cuban immigrants to the United States deserve special treatment. Such special treatment could validly retain the form of the current administration of the CAA, or take the form of repeal-

¹⁷⁴ See 8 U.S.C.A. § 1158(b)(1)(A) (West 2012) (“The Secretary of Homeland Security or the Attorney General *may* grant asylum to an alien who has applied for asylum . . . if the Secretary of Homeland Security or the Attorney General determines that such alien is a refugee.”) (emphasis added).

¹⁷⁵ See Hughes & Alum, *supra* note 2, at 215-16.

¹⁷⁶ 8 U.S.C.A. § 1101(a)(42)(A) (West 2012).

¹⁷⁷ *Id.* § 1101(a)(42)(B) (West 2012).

¹⁷⁸ *Id.* § 1182(a)(2)(A)(i)(I), (a)(3)(B)(i)(I), (a)(4), (a)(6)(A)(i) (West 2012).

¹⁷⁹ See *id.* § 1158(b)(1)(A), (d)(1) (West 2012).

¹⁸⁰ See *id.* § 1158(a)(1) (West 2012) (“Any alien who is physically present in the United States . . . may apply for asylum.”).

¹⁸¹ Compare *id.* § 1158(b)(1) with Meissner Memo, *supra* note 31.

ing the CAA and adding Cuba to the list of countries the immigrants from which are eligible for TPS.

With the possibility of Venezuela becoming identical to Cuba in its form of government, the question of how the United States would deal with immigrants from Venezuela under such circumstances arises. If Venezuela or any other Latin American country ever becomes identical to Cuba with respect to the right of citizens to change their government, the same solutions suggested above for Cubans should be extended to them. That is, the United States should extend the benefits of the CAA to them or add those nations to the list of countries eligible for TPS. The latter would likely require no additional political will, while the former would likely require significant political will. Thus, adding Cuba, Venezuela, and any other Latin American country that denies its citizens the right to change their government to the list of TPS-eligible countries would be the most pragmatic option.