

June 1, 2010

United States House of Representatives
Washington, DC 20515

Dear Member of Congress:

The National Lawyers Guild urges you to co-sponsor the Trade Restriction Reform and Export Enhancement Act (HR 4645), sponsored by House Agriculture Committee Chairman Collin Peterson and Representative Jerry Moran. The legislation will ease restrictions on U.S. agricultural sales to Cuba and allow U.S. citizens to travel to Cuba.

If passed, the Act would invalidate the current travel restrictions—an outdated product of the Cold War that was unreasonable, unjust and unproductive event then—which violate both the First and Fifth Amendments to the U.S. Constitution. The present travel restrictions state that travelers must “be licensed in order to engage in any travel-related transactions pursuant to travel to, from, and within Cuba”ⁱ and explicitly prohibit licenses for tourist travel. This restriction is unique to Cuba: the U.S. does not have similar transaction limits on travel to North Korea, China or Saudi Arabia, and the government offers no rational argument for maintaining this policy.

The ability of all U.S. citizens to travel to Cuba is essential to foster a robust exchange of academic and cultural ideas and communities and to strengthen relationships with Cuban counterparts. The legislation would also remove cumbersome restrictions on the sale of U.S. agricultural goods to Cuba, so that we might trade and invest in Cuba as the rest of the world does. It will strengthen the ability of U.S. business to provide food to Cuba, an impoverished nation that could benefit from such an influx.

U.S. citizens do not view Cuba as a threat worthy of such rigid travel constraints. A poll published by CNN/Opinion Research Corporation in April 2009 reveals that a large majority—64%--of respondents favor unrestricted travel to and from Cuba.ⁱⁱ An October 2009 poll of Cuban-Americans in the Miami area, conducted by Bendixen & Associates, yielded similar results: 59% of those surveyed supported ending the travel ban.ⁱⁱⁱ

Restriction of travel to Cuba violates the First Amendment because travel is an integral component of free expression. The right to travel facilitates the exchange of ideas and enables citizens to gain first-hand information about the effects of U.S. government policies on Cubans. It is only through travel and the acquisition of knowledge from varying perspectives that American citizens can become informed and most fully exercise their First Amendment rights.

The current restrictions are applied in such a way that they also infringe upon the Fifth Amendment rights of U.S. citizens who travel to Cuba. These travelers may receive a “Requirement to Furnish Information” (RFI) notice upon their return which demands information about their transactions during the trip. Citizens are forced to answer the RFI’s questions or face a fine despite the fact that the information requested may lead to

criminal fines and imprisonment, which violates the constitutional protection against self-incrimination.

Beyond the problems with the application of the current policy, the U.S. Supreme Court has held that the freedom to travel is protected by the Fifth Amendment. Justice William Douglas, in the opinion for *Kent v. Dulles*, wrote that “[t]he right to travel is a part of the ‘liberty’ of which the citizen cannot be deprived without due process of law under the Fifth Amendment.” 357 U.S. 125 (1958). Therefore, even if the transaction policy could be administered without denying the right to freedom from self-incrimination, the underlying illegality of the travel restriction itself remains.

The current Cuba travel policy is a relic of the Cold War era. The Supreme Court decision in *Regan v. Wald*, which upheld the travel restrictions, claimed they were “justified by weighty concerns of foreign policy.” 468 U.S. 242 (1984). Because Cold War national security threats can no longer validate the travel policy, we strongly believe that it should be abolished through the passage of the Freedom to Travel to Cuba Act. This Act, in addition to protecting the rights and liberties of American citizens, would offer an extraordinary opportunity for an open exchange of culture and ideas with the Cuban people, greatly benefiting both our nation and theirs.

H.R.4645 provides an opportunity to support U.S. farmers and agricultural businesses, while at the same time, make a positive contribution to the lives of ordinary Cubans. We urge you to support this bill without amendments.

The National Lawyers Guild was founded in 1937 as an alternative to the American Bar Association, which did not admit people of color at the time. The NLG is the oldest and largest public interest/human rights bar organization in the United States. Its headquarters are in New York and it has chapters in every state.

Sincerely,

David Gespass
President

Heidi Boghosian
Executive Director

ⁱ http://travel.state.gov/travel/cis_pa_tw/cis/cis_1097.html

ⁱⁱ <http://www.cnn.com/2009/POLITICS/04/10/poll.cuba>

ⁱⁱⁱ <http://www.reuters.com/article/politicsNews/idUSTRE53K5CS20090421>