

# United States Senate

WASHINGTON, DC 20510

COMMITTEES:  
COMMERCE, SCIENCE, AND  
TRANSPORTATION  
FOREIGN RELATIONS  
SELECT COMMITTEE ON INTELLIGENCE  
SMALL BUSINESS AND  
ENTREPRENEURSHIP

October 24, 2016

The Honorable Jacob Lew  
Secretary of the Treasury  
U.S. Department of the Treasury  
1500 Pennsylvania Avenue NW  
Washington, D.C. 20220

Dear Secretary Lew:

As we approach the two-year anniversary of President Obama's decision to begin normalizing our relationship with Cuba, I am concerned the administration continues to provide one-sided concessions to the Castro regime. These concessions come as Cuba has not changed its behavior and our leverage to get the Castros to change their brutal approach to the Cuban people dwindles with every loosening of sanctions. I am disappointed the U.S. and Cuba just held the first Human Rights Dialogue last week, even as the Castro regime has increased, its human rights abuses against the Cuban people since December 2014.

The Obama Administration announced changes on October 14, 2016 to the Cuba sanctions program without any discernable justification, including no change in behavior by the Cuban government. As you are well aware, the Castro regime continues to harbor fugitives from American justice, including the Cuban military officers responsible for shooting down the unarmed Brothers to the Rescue flight in 1996, and JoAnne Chesimard, who was convicted of the 1973 execution-style murder of a New Jersey state trooper. The Obama Administration's willful neglect of Cuba's suppression of basic human rights is despicable and it should be ashamed to continue these unwarranted concessions.

I respectfully request answers to the following questions:

1. The Office of Foreign Assets Control (OFAC) narrowed the definition of prohibited officials of the Government of Cuba so that it now only includes members of the Council of Ministers and flag officers of the Revolutionary Armed Forces; and narrowed the definition of the Cuban Communist Party to only include members of the Politburo. These changes were not included in the fact sheet released by your department or in the OFAC conference call with congressional staff, suggesting a deliberate attempt to hide them from the American people. How does relieving sanctions on government officials known to the United States and human rights organizations as serial abusers of human rights serve President Obama's oft-stated goals of empowering the Cuban people directly?
2. It is important OFAC ensures that individuals traveling to Cuba comply with the travel restrictions in the Cuban Assets Control Regulations (CACR). I am deeply concerned

that OFAC is not doing preemptive inspections to confirm travelers are complying with the CACR, including not engaging in tourist travel specifically prohibited by §515.560. Has OFAC conducted any inspections of travel agencies or equivalent organizations since December 17, 2014 to determine compliance with the travel restrictions in the CACR? If not, are there plans to conduct such preemptive checks?

3. A March 16, 2016 response from the Treasury Department to my August 3, 2015 letter to Acting Under Secretary of the Treasury Adam Szubin had details on licensing and enforcement of the CACR. Will your department provide an update on that information?
4. In general, has the number of personnel working on the Cuba sanctions program at OFAC—including in the licensing and compliance divisions – increased or decreased since December 2014?
5. In a change to the CACR that became effective on October 17, OFAC authorized “persons subject to U.S. jurisdiction to enter into certain contingent contracts for transactions currently prohibited by the embargo, provided that contract performance is made expressly contingent on prior authorization by OFAC and any other relevant Federal agency, or an authorization no longer being required. Transactions ordinarily incident to negotiating and entering into such contracts will also be authorized.” During a conference call on October 14, OFAC staff suggested that a precedent for this action is a 1996 Treasury action linked to the Iraq “oil for food” program. It is my understanding that the 1996 action did not involve an embargo on Iraq or other prohibitions in U.S. law, but involved changing an executive order and regulations promulgated by the Executive Branch. It is troublesome that your department would sow confusion in the private sector by allowing contingency contracts for an embargo that has not been lifted by the U.S. Congress. Since the Iraq example is clearly not pertinent, what precedent exists for the CACR change?
6. As you are aware, Section 103 of the Cuban Liberty and Democratic Solidarity (Libertad) Act of 1996 prohibits loans, credit, or other financing by U.S. persons for the purpose of financing transactions involving confiscated property, which is also described in §515.208. However, §515.584 authorizes all transactions for the processing and payment of credit and debit cards involving travel-related and other transactions consistent with §515.560. Can you confirm that the use of credit and debit cards are not authorized if that transaction takes place on confiscated property regardless of whether the transaction occurs via authorized travel to Cuba? If so, does OFAC intend to clarify this discrepancy in the next publication of the Cuba-related frequently asked questions?

The American people look to you to protect the U.S. financial system from terrorists and human rights abusers, but this administration’s focus appears to be handing out concessions to the Castro regime whether it has earned them or not. It is clear the changes since December 2014 have only emboldened the Castro regime rather than benefitted the Cuban people. I am deeply

concerned this administration's approach to Cuba has moved us backward instead of toward the goal of a democratic and free Cuba.

I look forward to receiving your response in a timely manner.

Sincerely,

A handwritten signature in blue ink, consisting of stylized initials 'MR' followed by a horizontal line.

Marco Rubio  
United States Senator