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DEPARTMENT OF STATE

[Public Notice: 10178]

Strengthening the Policy of the United States Toward Cuba

AGENCY: Department of State.

ACTION: Notice.

National Security Presidential Memorandum NSPM-5 entitled “Strengthening the Policy of the United States Toward Cuba” was issued by the President on June 16, 2017. The memorandum outlines the Administration’s policy toward Cuba and policy implementation actions to be taken by heads of departments and agencies. The President authorized and directed the Secretary of State to publish this memorandum in the *Federal Register*. The text of the memorandum is set out below.

Janet Freer,

Director,

Office of Directives Management,

Bureau of Administration,

Department of State.

National Security Presidential Memorandum on Strengthening the Policy of the United States Toward Cuba

MEMORANDUM FOR THE VICE PRESIDENT

THE SECRETARY OF STATE

THE SECRETARY OF THE TREASURY

THE SECRETARY OF DEFENSE

THE ATTORNEY GENERAL

THE SECRETARY OF THE INTERIOR

THE SECRETARY OF AGRICULTURE

THE SECRETARY OF COMMERCE

THE SECRETARY OF HEALTH AND HUMAN SERVICES

THE SECRETARY OF TRANSPORTATION

THE SECRETARY OF HOMELAND SECURITY

THE DIRECTOR OF NATIONAL INTELLIGENCE

THE DIRECTOR OF THE CENTRAL INTELLIGENCE AGENCY

THE CHAIRMAN OF THE JOINT CHIEFS OF STAFF

THE ASSISTANT TO THE PRESIDENT AND CHIEF OF STAFF

THE DIRECTOR OF THE OFFICE OF MANAGEMENT AND BUDGET

THE ASSISTANT TO THE PRESIDENT FOR NATIONAL SECURITY

AFFAIRS

THE ASSISTANT TO THE PRESIDENT FOR

HOMELAND SECURITY AND COUNTERTERRORISM

THE COUNSEL TO THE PRESIDENT
THE ASSISTANT TO THE PRESIDENT
FOR ECONOMIC AFFAIRS
THE UNITED STATES TRADE REPRESENTATIVE
THE DIRECTOR OF THE OFFICE OF SCIENCE
AND TECHNOLOGY POLICY
THE REPRESENTATIVE OF THE UNITED STATES
TO THE UNITED NATIONS
THE ADMINISTRATOR OF THE SMALL BUSINESS
ADMINISTRATION
THE ADMINISTRATOR OF THE UNITED STATES AGENCY
FOR INTERNATIONAL DEVELOPMENT
THE DIRECTOR OF THE OFFICE OF PERSONNEL
MANAGEMENT

Section 1. Purpose.

The United States recognizes the need for more freedom and democracy, improved respect for human rights, and increased free enterprise in Cuba. The Cuban people have long suffered under a Communist regime that suppresses their legitimate aspirations for freedom and prosperity and fails to respect their essential human dignity.

My Administration's policy will be guided by the national security and foreign policy interests of the United States, as well as solidarity with the Cuban people. I will seek to

promote a stable, prosperous, and free country for the Cuban people. To that end, we must channel funds toward the Cuban people and away from a regime that has failed to meet the most basic requirements of a free and just society.

In Cuba, dissidents and peaceful protesters are arbitrarily detained and held in terrible prison conditions. Violence and intimidation against dissidents occurs with impunity. Families of political prisoners are not allowed to assemble or peacefully protest the improper confinement of their loved ones. Worshippers are harassed, and free association by civil society organizations is blocked. The right to speak freely, including through access to the internet, is denied, and there is no free press. The United States condemns these abuses.

The initial actions set forth in this memorandum, including restricting certain financial transactions and travel, encourage the Cuban government to address these abuses. My Administration will continue to evaluate its policies so as to improve human rights, encourage the rule of law, foster free markets and free enterprise, and promote democracy in Cuba.

Sec. 2. Policy.

It shall be the policy of the executive branch to:

(a) End economic practices that disproportionately benefit the Cuban government or its military, intelligence, or security agencies or personnel at the expense of the Cuban people.

(b) Ensure adherence to the statutory ban on tourism to Cuba.

(c) Support the economic embargo of Cuba described in section 4(7) of the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996 (the embargo), including by opposing measures that call for an end to the embargo at the United Nations and other international forums and through regular reporting on whether the conditions of a transition government exist in Cuba.

(d) Amplify efforts to support the Cuban people through the expansion of internet services, free press, free enterprise, free association, and lawful travel.

(e) Not reinstate the "Wet Foot, Dry Foot" policy, which encouraged untold thousands of Cuban nationals to risk their lives to travel unlawfully to the United States.

(f) Ensure that engagement between the United States and Cuba advances the interests of the United States and the Cuban people. These interests include: advancing Cuban human rights; encouraging the growth of a Cuban private sector independent of government control; enforcing final orders of removal against Cuban nationals in the United States; protecting the national security and public health and safety of the United States, including through proper engagement on criminal cases and working to ensure the return of fugitives from American justice living in Cuba or being harbored by the Cuban government; supporting United States agriculture and protecting plant and animal health; advancing the understanding of the United States regarding scientific and environmental challenges; and facilitating safe civil aviation.

Sec. 3. Implementation.

The heads of departments and agencies shall begin to implement the policy set forth in section 2 of this memorandum as follows:

(a) Within 30 days of the date of this memorandum, the Secretary of the Treasury and the Secretary of Commerce, as appropriate and in coordination with the Secretary of State and the Secretary of Transportation, shall initiate a process to adjust current regulations regarding transactions with Cuba.

(i) As part of the regulatory changes described in this subsection, the Secretary of State shall identify the entities or subentities, as appropriate, that are under the control of, or act for or on behalf of, the Cuban military, intelligence, or security services or personnel (such as Grupo de Administracion Empresarial S.A. (GAESA), its affiliates, subsidiaries, and successors), and publish a list of those identified entities and subentities with which direct financial transactions would disproportionately benefit such services or personnel at the expense of the Cuban people or private enterprise in Cuba.

(ii) Except as provided in subsection (a)(iii) of this section, the regulatory changes described in this subsection shall prohibit direct financial transactions with those entities or subentities on the list published pursuant to subsection (a)(i) of this section.

(iii) The regulatory changes shall not prohibit transactions that the Secretary of the Treasury or the Secretary of Commerce, in coordination with the Secretary of State, determines are consistent with the policy set forth in section 2 of this memorandum and:

(A) concern Federal Government operations, including Naval Station Guantanamo Bay and the United States mission in Havana;

(B) support programs to build democracy in Cuba;

(C) concern air and sea operations that support permissible travel, cargo, or trade;

(D) support the acquisition of visas for permissible travel;

(E) support the expansion of direct telecommunications and internet access for the Cuban people;

(F) support the sale of agricultural commodities, medicines, and medical devices sold to Cuba consistent with the Trade Sanctions Reform and Export Enhancement Act of 2000 (22 U.S.C. 7201 et seq.) and the Cuban Democracy Act of 2002 (22 U.S.C. 6001 et seq.);

(G) relate to sending, processing, or receiving authorized remittances;

(H) otherwise further the national security or foreign policy interests of the United States; or

(I) are required by law.

(b) Within 30 days of the date of this memorandum, the Secretary of the Treasury, in coordination with the Secretary of State, shall initiate a process to adjust current regulations to ensure adherence to the statutory ban on tourism to Cuba.

(i) The amended regulations shall require that educational travel be for legitimate educational purposes. Except for educational travel that was permitted by regulation in effect on January 27, 2011, all educational travel shall be under the auspices of an organization subject to the jurisdiction of the United States, and all such travelers must be accompanied by a representative of the sponsoring organization.

(ii) The regulations shall further require that those traveling for the permissible purposes of non academic education or to provide support for the Cuban people:

(A) engage in a full-time schedule of activities that enhance contact with the Cuban people, support civil society in Cuba, or promote the Cuban people's independence from Cuban authorities; and

(B) meaningfully interact with individuals in Cuba.

(iii) The regulations shall continue to provide that every person engaging in travel to Cuba shall keep full and accurate records of all transactions related to authorized travel, regardless of whether they were effected pursuant to license or otherwise, and such records shall be available for examination by the Department of the Treasury for at least 5 years after the date they occur.

(iv) The Secretary of State, the Secretary of the Treasury, the Secretary of Commerce, and the Secretary of Transportation shall review their agency's enforcement of all categories of permissible travel within 90 days of the date the regulations described in this subsection are finalized to ensure such enforcement accords with the policies outlined in section 2 of this memorandum.

(c) The Secretary of the Treasury shall regularly audit travel to Cuba to ensure that travelers are complying with relevant statutes and regulations. The Secretary of the Treasury shall request that the Inspector General of the Department of the Treasury inspect the activities taken by the Department of the Treasury to implement this audit requirement. The Inspector General of the Department of the Treasury shall provide a report to the President, through the Secretary of the Treasury, summarizing the results of that inspection within 180 days of the adjustment of current regulations described in subsection (b) of this section and annually thereafter.

(d) The Secretary of the Treasury shall adjust the Department of the Treasury's current regulation defining the term "prohibited officials of the Government of Cuba" so that, for purposes of title 31, part 515 of the Code of Federal Regulations, it includes Ministers and Vice-Ministers, members of the Council of State and the Council of Ministers; members and employees of the National Assembly of People's Power; members of any provincial assembly; local sector chiefs of the Committees for the Defense of the Revolution; Director Generals and sub-Director Generals and higher of all Cuban ministries and state agencies; employees of the Ministry of the Interior (MININT); employees of the Ministry of Defense (MINFAR); secretaries and first secretaries of the Confederation of Labor of Cuba (CTC) and its component unions; chief editors, editors, and deputy editors of Cuban state-run media organizations and programs, including newspapers, television, and radio; and members and employees of the Supreme Court (Tribuno Supremo Nacional).

(e) The Secretary of State and the Representative of the United States to the United Nations shall oppose efforts at the United Nations or (with respect to the Secretary of State) any other international forum to lift the embargo until a transition government in Cuba, as described in section 205 of the LIBERTAD Act, exists.

(f) The Secretary of State, in coordination with the Attorney General, shall provide a report to the President assessing whether and to what degree the Cuban government has satisfied the requirements of a transition government as described in section 205(a) of the LIBERTAD Act, taking into account the additional factors listed in section 205(b) of that Act. This report shall include a review of human rights abuses committed against the Cuban people, such as unlawful detentions, arbitrary arrests, and inhumane treatment.

(g) The Attorney General shall, within 90 days of the date of this memorandum, issue a report to the President on issues related to fugitives from American justice living in Cuba or being harbored by the Cuban government.

(h) The Secretary of State and the Administrator of the United States Agency for International Development shall review all democracy development programs of the Federal Government in Cuba to ensure that they align with the criteria set forth in section 109(a) of the LIBERTAD Act.

(i) The Secretary of State shall convene a task force, composed of relevant departments and agencies, including the Office of Cuba Broadcasting, and appropriate non-governmental organizations and private-sector entities, to examine the technological challenges and opportunities for expanding internet access in Cuba, including through Federal Government support of programs and activities that encourage freedom of expression through independent media and internet freedom so that the Cuban people can enjoy the free and unregulated flow of information.

(j) The Secretary of State and the Secretary of Homeland Security shall continue to discourage dangerous, unlawful migration that puts Cuban and American lives at risk. The Secretary of Defense shall continue to provide support, as necessary, to the Department of State and the Department of Homeland Security in carrying out the duties regarding interdiction of migrants.

(k) The Secretary of State, in coordination with the Secretary of the Treasury, the Secretary of Defense, the Attorney General, the Secretary of Commerce, and the Secretary of Homeland Security, shall annually report to the President regarding the

engagement of the United States with Cuba to ensure that engagement is advancing the interests of the United States.

(l) All activities conducted pursuant to subsections (a) through (k) of this section shall be carried out in a manner that furthers the interests of the United States, including by appropriately protecting sensitive sources, methods, and operations of the Federal Government.

Sec. 4. Earlier Presidential Actions.

(a) This memorandum supersedes and replaces both National Security Presidential Directive-52 of June 28, 2007, U.S. Policy toward Cuba, and Presidential Policy Directive-43 of October 14, 2016, United States-Cuba Normalization.

(b) This memorandum does not affect either Executive Order 12807 of May 24, 1992, Interdiction of Illegal Aliens, or Executive Order 13276 of November 15, 2002, Delegation of Responsibilities Concerning Undocumented Aliens Interdicted or Intercepted in the Caribbean Region.

Sec. 5. General Provisions.

(a) Nothing in this memorandum shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This memorandum shall be implemented consistent with applicable laws and subject to the availability of appropriations.

(c) This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

(d) The Secretary of State is hereby authorized and directed to publish this memorandum in the Federal Register.

Donald J. Trump

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