



September 13, 2010

Chairman Howard L. Berman
House Committee on Foreign Affairs
U.S. House of Representatives
Washington, DC 20515

Ranking Member Ileana Ros-Lehtinen
House Committee on Foreign Affairs
U.S. House of Representatives
Washington, DC 20515

Re: ACLU Supports H.R. 4645, the Travel Restriction Reform and Export Enhancement Act

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Dear Chairman Berman and Ranking Member Ros-Lehtinen:

On behalf of the American Civil Liberties Union (ACLU), a non-partisan organization with more than half a million members, countless additional activists and supporters, and 53 affiliates nationwide, we write today to express our strong support for H.R. 4645, the Travel Restriction Reform and Export Enhancement Act, offered by Representative Collin C. Peterson and a bipartisan group of 73 co-sponsors. H.R. 4645 would remove restrictions on the right of individuals to travel to Cuba, thereby resolving a longstanding and unfounded limitation on the constitutionally guaranteed right to travel. These changes are long overdue and we urge you to support H.R. 4645 if and when it comes up for consideration in the House Committee on Foreign Affairs.

As former Supreme Court Justice William O. Douglas observed, “[f]reedom of movement is the very essence of our free society, setting us apart. Like the right of assembly and the right of association, it often makes all other rights meaningful – knowing, studying, arguing, exploring, conversing, observing and even thinking.”¹ The right to travel is a necessary predicate for an individual’s meaningful exercise of fundamental rights. It also facilitates the dissemination of information and promotes a diverse marketplace of ideas. The benefits of travel adhere to both the individual who travels as well as to the community that receives the traveler.

The right to travel is a concept as old as the earliest principles of democratic government and in our country is constitutionally guaranteed. As noted in a foundational case in the 1960’s, the right to travel is a liberty interest protected under the Fifth Amendment in the United States, but arises out of concepts memorialized in the Magna Carta.² The right to travel has a global reach with recognition in international human rights law, including Article 13 of the Universal Declaration of Human Rights adopted by the U. N.

¹ *Aptheker v. Secretary of State*, 378 U.S. 500, 520 (1964) (Douglas, J., concurring).

² *Kent v. Dulles*, 357 U.S. 116, 125-26 (1958).

General Assembly without opposition in 1948 and Article 12 of the International Covenant on Civil and Political Rights, which the U. S. Senate ratified in 1992. Nevertheless, Congress and the Executive Branch have imposed a series of restrictions that render travel to Cuba effectively impossible. Under the Cuban Assets Control Regulations, those wishing to travel to Cuba must obtain permission from the federal government. Not only does the government retain the ability to restrict travel through its passport requirements, but the regulations impose onerous penalties for almost all financial transactions that might be necessary to travel or for daily living expenses during travel.³

Though the Court upheld the Cuba travel ban in the course of acknowledging the right to travel, that approval occurred in the immediate aftermath of the Cuban missile crisis in the early 1960's. In that case, the Court specifically cited the temporal proximity of the missile crisis and the existence of an extreme national security threat as the basis for justifying a restriction on the constitutional right to travel.⁴ By any reasonable measure, those justifications no longer exist in 2010 and have not at least since the collapse of the Soviet Union two decades ago. While emergency situations, such as natural disasters, medical epidemics, or armed conflict, might justify limited restrictions on the right to travel, government must look first to voluntary measures and in any event must limit any restriction as much as possible because of the fundamental nature of the right. In the case of Cuba, no longer can any reasonable advocate claim that a serious national security risk justifies any ongoing restriction on the fundamental constitutional right of free movement.

Implicitly acknowledging the absence of a continuing threat, in 2009 the administration relaxed regulations to allow limited travel by Cuban-Americans to visit family. While these improvements are welcome, they do not go far enough and simply create a discriminatory aspect to the restrictions – allowing visits by one group, but otherwise maintaining the general prohibition on travel and spending for everyone else.

H.R. 4645, however, does go further. It specifically bars restrictions on travel to Cuba and restrictions on transactions incident to such travel. The language of the bill appears to address the restrictions existing in the Cuban Assets Control Regulations as well as the corresponding language found in Title 22 of the U. S. Code ratifying those regulations. It provides a narrow and acceptable set of exceptions to allow re-imposition of restrictions in times of actual armed conflict or for imminent danger to public health. In short, the bill takes a significant step toward removing the encumbrances now routinely burdening Americans' right to travel to Cuba.⁵

Though we express no opinion on the separate provisions of the bill relating to amendments to the Trade Sanctions Reform and Export Enhancement Act of 2000, we appreciate the leadership of those in both parties who brought together two aspects of Cuba travel and trade policy to craft a bill with broadened support while preserving the critical element of removing unwarranted

³ 31 CFR Part 515 (Cuban Assets Control Regulations); *see also* 21 U.S.C. §6032 (ratifying Part 515 regulations).

⁴ *Zemel v. Rusk*, 381 U.S. 1, 14-16 (1965).

⁵ We would prefer a more comprehensive approach to removing existing travel restrictions, such as the outright repeal of certain statutory and regulatory provisions. We have some concern that the language of the bill – limited to travel and 'transactions incident to travel' – could be interpreted narrowly and leave travelers facing uncertainty as to the kinds of transactions that might subject them to criminal prosecution. However, in our view, the bill represents such a significant step forward that it deserves our strong support.

restrictions on individual rights. We applaud the favorable bipartisan vote in favor of the bill in the House Agriculture Committee. Further, we acknowledge the significant statements of support from groups such as the Latin America Working Group, the Committee on International Justice and Peace, the Interreligious Foundation for Community Organization, as well as the U. S. Chamber of Commerce, among many other organizations from across the political spectrum. The ACLU has long supported removing restrictions on the right to travel to Cuba, having submitted letters and testimony regularly over the last ten years. We are pleased that H.R. 4645 has now moved forward in one committee and we urge you to support the bill if and when it comes up for consideration in the Committee on Foreign Affairs. We also urge you to encourage leadership on both sides of the aisle to bring this important matter to a vote on the floor of the House at the earliest possible opportunity.

Thank you for considering our views in support of H.R. 4645. Please do not hesitate to contact Chief Legislative Counsel Michael W. Macleod-Ball at 202-675-2309 or at mmacleod@dcacclu.org with any questions or comments you may have about our position.

Sincerely,



Laura W. Murphy
Director, Washington Legislative Office



Michael W. Macleod-Ball
Chief Legislative and Policy Counsel

cc: Members of the House Committee on Foreign Affairs