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Hijackings Create Tensions with US

by LADB Staff

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Following the Cuban trials of 75 journalists and human rights workers (see NotiCen, 2002-05-08), an immigration crisis unlike any other is unfolding. What makes this crisis unique is that it occurs against the backdrop of President George W. Bush's war against Iraq and his threats of unlimited war against states, such as Cuba, that it considers sponsors of terrorism. While no mass exodus from Cuba has occurred, there has been a rash of hijackings culminating in the execution in Cuba of three men involved in the failed attempt to hijack a Havana harbor ferry on April 2.

Under the 1966 Cuban Adjustment Act, as modified in a 1999 memo by Doris Meissner, then director of the Immigration and Naturalization Service (now the Bureau of Citizenship and Immigration Services, BCIS), Cuban immigrants may be granted parole status whether they arrive by legal or illegal means. The memo reassured Cubans that it was not necessary for them to ask for political asylum, as other illegal immigrants must do to win release under parole and eventual residence status (see NotiCen, 1999-05-13).

Cuba and the US agreed in the 1994, 1995 migratory accords to encourage Cubans to seek legal means of departure by applying for US visas. Cuba promised to discourage "irregular and unsafe departures." The agreement requires the US to intercept boat people (balseros) and return them to Cuba but does not require the return of Cubans who make it ashore. This gave rise to the wet-foot/dry-foot policy: wet foot is turned away, dry foot stays in the US. To make all this work, the US promised to "process" at least 20,000 visa applications per year, obviating the need for "irregular means of departure."

Accords fail to prevent hijacking

The migratory accords have proven inadequate to control hijacking, in part because of the asymmetry in the policies of the two countries. Only the US benefits by the arrival in manageable numbers of balseros, who reinforce US claims that Cuba is a prison for its citizens. There is no incentive for the US to end illegal immigration but only to prevent another unmanageable exodus. The accords allow the US to blame any migratory crisis on Cuba's failure "to discourage irregular and unsafe departures" as required in the accords. By placing the blame for the hijackings on Cuba, the US could justify retaliation against Cuba under a provision in the 1996 Helms-Burton Act, which defines mass migrations from Cuba as a national-security issue. Sec. 101(4)B of Helms-Burton states, "Any further political manipulation of the desire of Cubans to escape that results in mass migration to the United States, will be considered an act of aggression, which will be met with an appropriate response." It is perhaps the junction of these two provisions that President Fidel Castro had in mind when he told the Argentine newspaper Pagina 12 that the Bush administration was orchestrating the recent hijackings.

The "planned" wave of hijackings, Castro said, coincided with the start of the US war against Iraq and was intended to create the pretext for a Cuba-US conflict. This was the context in which the Cuban government ended the hijackings by executing the three hijackers of the Havana harbor ferry. Whatever the role of the US was in the March and April hijackings, the current rash began Nov. 11, 2002, with the diversion of an Anatonov-2 crop-duster that landed in Key West, Florida (see NotiCen, 2003-02-13).

Parole awards are inconsistent

The crop-duster incident illustrates the ineffectiveness of the migratory accords to control illegal immigration. A major shortcoming is that they do not consistently regulate the granting of parole status that allows immigrants to remain in the US despite illegal entry. Against Cuban protests, the US does not always repatriate Cubans picked up at sea. In two recent cases, immigration officials said they would interview those captured at sea to determine if they merited political asylum. The 1995 migratory accord requires the US to repatriate those picked up at sea unless they can demonstrate a well-founded fear of persecution in Cuba. The accord, therefore, irrationally holds those picked up at sea to a higher standard for parole than those who make it to dry land. The dual standards also give unlimited discretion to immigration interviewers and judges to award asylum based on unsubstantiated claims of persecution by those picked up at sea.

In hijacking cases, those on board who wish to stay are eventually released on immigration parole even though they arrived by means of air piracy. The pilot and passengers in the crop-duster case were released to relatives in Miami (see NotiCen, 2003-02-13). On March 19, six men hijacked a Cuban Aerotaxi DC-3 from Nueva Gerona, Isla de la Juventud. Nine passengers, reportedly relatives of the hijacker, are likely to receive permanent residence.

On Feb. 7, four armed members of Cuba's border guard diverted their patrol boat to Key West. Arriving undetected, they tied up at the Hyatt Marina Resort and walked in uniform, one of them armed, to turn themselves over to police. Despite a demand from the Cuban government that the crew members be returned, the BCIS allowed them to remain in Florida. Federal prerogatives uncertain A second problem with current migratory practices is inconsistency in asserting federal prerogatives.

On Nov. 18, a Miami court allowed the crop-duster to be sold and the proceeds turned over to Ana Margarita Martinez (see NotiCen, 2003-02-13). Martinez's former husband, Juan Pablo Roque, is believed to have been a Cuban intelligence agent who infiltrated Hermanos al Rescate prior to the 1996 shutdown of two Hermanos planes near Cuba. Martinez sued the Cuban government in Miami-Dade Circuit Court under the 1996 Anti-Terrorism Act, which allows claimants to seek damages resulting from acts of terrorism.

In 2001, Judge Alan Postman ordered the Cuban government to pay Martinez US\$27 million after agreeing with her contention that she suffered emotional damage because of the marriage. Judge Postman's decision brought him into conflict with federal interests. In a previous case, the government stepped in to stop the seizure of funds owed by US firms to the Cuban

telecommunications company ETECSA, arguing that attaching those assets would interfere with the federal government's foreign policy prerogatives (see NotiCen, 2001-03-29).

In the crop-duster case, State Department spokesman Philip Reeker said in a press briefing Nov. 19 that he thought the US government's intention was to return the plane to Cuba even though the State Department was well aware of the award to Martinez. The plane was sold at auction by Monroe County authorities without federal interference. But even here, authorities have been inconsistent in asserting federal powers over the order of a local circuit court. One week after the Monroe County sheriff's office impounded the DC-3, the federal government ignored Martinez's claim and promptly returned the Cuban patrol boat to Cuba. The reason given was that the US considers the boat "a warship" of a sovereign country.

Record of prosecutions inconsistent

There are also indications that a struggle is underway among federal and local officials regarding what to do with hijackers. In the April 1 crop-duster hijacking, James Cason, head of the US Interests Section, spoke directly to the hijacker who diverted an Anatov-24 to Key West. Cason warned him, while the plane was refueling in Havana, that he faced certain prosecution in the US. However, Cason's warning was not entirely realistic. In the past, immigration officials have often tried to charge hijackers with illegal entry a far cry from air piracy and terrorism only to have the accused acquitted in local courts. The eight who arrived in the stolen crop-duster were not charged with any crime and were allowed to stay in the US. But the six alleged DC-3 hijackers were held on air-piracy charges and face 20-year prison terms.

US Magistrate Judge Hugh Morgan overruled federal prosecutors' objections and released all six on bond. Morgan's ruling was upheld by Senior US District Judge James Lawrence King of Miami, also over the objections of federal prosecutors. Morgan later denied bond to the accused hijacker in the April 1 Anatov-24 hijacking because of his criminal record in Cuba.

Terrorism alert ineffective

A third source of trouble with the accords is that they may override procedures governing the entry of foreign agents into the US under conditions of a national terrorism alert. At present, Cubans arriving by irregular means appear to fall entirely outside the post-911 scrutiny of illegal immigrants. The Feb. 7, arrival of the Cuban patrol boat occurred on the same day the Homeland Security Department declared a heightened terrorist alert. Nevertheless, the BCIS, a bureau of that department, granted the four crew members parole.

The question of border integrity surfaced again on Feb. 28, when six Cubans landed at the US Naval Base at Key West in a small boat, climbed a security fence, and walked to a bar where they bought beer and made phone calls for more than an hour before police arrived. Castro pointed out that the DC-3 hijackers used the same methods and similar weapons that were used to hijack the airliners that flew into the twin towers in New York and the Pentagon on Sept. 11, 2001.

Shifting blame

The US has often treated hijacking as a failure of Cuban security, usually suggesting it is part of a plan to create migratory chaos to justify unleashing another massive exodus to Florida. State Department spokesman Philip Reeker blamed the April 1 hijacking on lax Cuban security and linked it to the Cuban crackdown on US-funded journalists and human rights workers arrested in March. "While Cuban police have been arresting some 90 democracy and human rights activists and independent journalists and librarians, they have hijacking taking place at their airports," said Reeker.

In a diplomatic note March 20, the Cuban Foreign Ministry said it was concerned about the "complacency and tolerance" shown by the US in these incidents and reminded the US government that hijacking was a terrorist act under three international aviation conventions signed by both countries.

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