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US Cracks Down on Travel To Cuba

by LADB Staff

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The US Treasury Department, through its Office of Foreign Assets Control (OFAC), has begun to enforce restrictions on travel to Cuba by US citizens. News of the crackdown followed within days a promise by President George W. Bush to toughen US sanctions against Cuba. Before Bush issued his first six-month waiver of a key provision in the 1996 Helms-Burton Act in mid-July, he pledged to bring democracy to Cuba by strengthening the trade embargo and other sanctions. He ordered the Treasury Department to reduce "unlicensed and excessive travel" to Cuba and to enforce limits on the amount of dollar remittances that could be sent to Cuba (see NotiCen, 2001-07-26).

Between May 4 and July 30, the Treasury Department mailed letters to 443 Cuba travelers warning them that they might be liable for heavy civil penalties. From Jan. 3 to May 3, only 74 such letters were sent out. The letters are known as pre- penalty notifications. They ask travelers to fill out a questionnaire giving details of their trip and allow them 20 days to reply. The letter includes the estimated amount of the fine the traveler is likely to pay if OFAC decides the trip violated the Trading with the Enemy Act.

Under the law, US citizens and residents may not spend money in Cuba unless issued a license from the Treasury Department. Fines have averaged US\$7,500, but the maximum civil penalty under the law is US\$55,000. Unlicensed travelers may also be tried on criminal charges and, if convicted, may be sentenced to 10-year prison terms and fined up to US\$250,000. Even with pre-penalty letters going out by the hundreds, OFAC has a long way to go to punish the thousands of illegal travelers. Some estimates place the number of unlicensed US visitors to Cuba last year at more than 20,000.

The surge in pre-penalty letters is not necessarily the result of Bush's July order to creak down on unlicensed travel, the Treasury Department said. Spokeswoman Tasia Scolinos said the increased enforcement began during the administration of President Bill Clinton and was intended to reduce the backlog of violation cases. OFAC sent out 188 pre- penalty letters during Clinton's last year in office. Scolinos said the department was working on ways to comply with Bush's crackdown order.

While OFAC says the crackdown was a Clinton administration idea, Dennis Hays, executive vice president of the Cuban American National Foundation (CANF) suggested that Clinton had undercut enforcement of the travel ban. "Our sense was that under the previous administration, [the Treasury Department] was certainly not encouraged, and maybe actively discouraged, from enforcing the law, and that under this [Bush] administration, they've been told or allowed to do their jobs."

An article in The Miami Herald reported that OFAC has seldom tried seriously to collect if travelers who receive the pre-penalty letters demand a hearing or simply refuse to pay. In many cases, the department will settle for a fraction of the penalty in a negotiated settlement. In the past, the lax enforcement was apparently the result of inadequate resources to handle violation cases. But the

department says it will now add administrative judges borrowed from the Environmental Protection Agency (EPA) to help clear up the backlog of unresolved cases.

One curiosity in the complex travel-ban debate is that the anti-Castro exile community, which strongly supports the ban, includes many people who violate it by exceeding the number of legal trips allowed each year (one) to visit relatives in Cuba. Of the 176,000 licensed travelers who went to Cuba last year, 120,000 were of Cuban descent. John Kavulich, head of the US-Cuba Trade and Economic Council, said travelers of Cuban descent are the ones "who most violate the travel regulations."

A recent poll by Florida International University showed that 53% of Cubans in Miami opposed the travel restrictions and, nationally, 67% of all Americans favored freedom to travel to Cuba. Granma, the official government newspaper in Cuba, said that, through the crackdown, Bush was returning a favor to his supporters in the Miami Cuban-exile community. "They handed him the White House last January," said Granma. Congress votes to end travel-ban enforcement Stepped-up enforcement of the travel restrictions will not happen if Congress has its way. While Bush is moving to stop unlicensed travel, Congress is moving in the opposite direction. Shortly after the president's July announcement on travel, the House voted 240-186 to prohibit the Treasury Department from spending any money on enforcement.

A similar bill is pending in the Senate. Rep. Jeff Flake (R-AZ) said the rash of pre-penalty letters was "just an example of how absurd it is for our government to try to restrict where our citizens can go." In February, OFAC went after Leslie Noonves, CBS Television CEO, and Tom Freston, CEO of MTV, after they returned from a trip to Cuba where they met with President Fidel Castro. Other top officers of such entertainment organizations as the William Morris Agency and Vanity Fair magazine are also being investigated for unlicensed travel. Some critics of the travel policy charge the Treasury Department with capricious and arbitrary restrictions and permitting various classes of travelers to have licenses while denying them to others.

A report in the St. Petersburg (Florida) Times cited the case of a couple who were fined after their boat broke down forcing them to dock in Cuba for repairs. Another traveler to Cuba was fined after taking his father's ashes there for burial. Sen. Byron Dorgan (D-ND), an opponent of the travel restrictions, said OFAC fined Donna Schultz, a 64-year-old retired social worker, US\$7,600 because she went to Cuba for a cycling tour. "The Office of Foreign Asset Control is supposed to be fighting terrorism, not chasing retired American citizens who are riding a bicycle in Cuba," Dorgan said. However, OFAC chief Richard Newcomb said the law was being applied "evenhandedly," and he denied that fines were arbitrarily assessed.

In an Aug. 17 press release, Sen. Dorgan, who is chair of the Senate Appropriations Subcommittee that controls Treasury Department funding, called the travel ban "heavy-handed and ill-advised." Dorgan wrote a letter to Treasury Secretary Paul O'Neill asking him to suspend enforcement of the ban until Congress votes on the bill to withdraw funding for enforcement and on another to lift the ban outright. Dorgan also objected to Treasury's plan to use EPA administrative judges to hear the travel cases. "If judges from the EPA have enough time to go over to Treasury to handle enforcement cases on Cuba travel, then there's something wrong with the priorities of EPA....I

intend to add a provision in the appropriations bill that would prohibit Treasury from spending funds to use the EPA judges for these cases. The money appropriated for the Environmental Protection Agency is designed to be used for those purposes, not to engage in some ill-considered crackdown on Cuba travel by American citizens."

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