

## I

## The Making of Cuban Immigration Exceptionalism, 1959–1979

On January 1, 1959, Cuban President Fulgencio Batista fled the country. His notoriously corrupt government, which tortured opponents, allied with Washington in its Cold War contest with the Soviet Union for global domination. Disrespecting the 1940 Constitution and the country's 1944 election, Batista mainly ruled in the interests of the upper and middle classes and of US business that invested in and traded with Cuba. Cubans born rich and poor, light- and dark-skinned, had very different lived experiences and opportunities.

Batista fled as Fidel Castro mobilized a movement that captured many Cubans' imagination. He rode to power as a nationalist who sought to end US domination of the country that dated back to when Cuba gained independence from Spain in 1898,<sup>1</sup> and as a populist committed to improving the well-being of the country's less privileged citizens. At the time he was not a communist. Yet, within a few years he oversaw a radical remaking of Cuba. In the throes of the Cold War he declared himself a Marxist-Leninist, allied with the Soviet Union, and established the Communist Party as the sole political party. The country's makeover included expropriation of most private businesses, both domestic and foreign-owned, and promotion of new egalitarian, collectivistic norms and values. The pre-revolution privileged classes lost their base of wealth and status, while the lower classes gained access to health care, schooling, jobs in the expanding state sector, and a new sense of dignity. The

<sup>1</sup> On US influence prior to 1959, see Louis Pérez, *Cuba under the Platt Amendment, 1902–1934* (Pittsburgh: University of Pittsburgh Press, 1986).

different social classes thus experienced the country's makeover very differently.

Washington resented and resisted Castro's rule because his revolution-in-the-making both undermined US business interests in Cuba and challenged US hegemony over Latin America and, to a lesser extent, other Third World countries. While global opinion by 1959 considered intervention in the internal affairs of another country unprincipled and illegal, that did not stop Republican Dwight Eisenhower, who was president at the time, from trying to oust Castro. It did, however, shape his strategies. Eisenhower turned to "soft power" means,<sup>2</sup> which included welcoming Cubans, among them Cubans who initially sided with Castro but who became disaffected with the radicalization of the revolution and who fled persecution in fear for their lives. Eisenhower hoped to convince the Cuban arrivals of the virtues of capitalist democracy. His presidential successors, John F. Kennedy (1961–1963) and Lyndon Johnson (1963–1969), both Democrats, did the same. They offered Cubans unique immigration rights and resettlement benefits to help them adapt well. In sapping Cuba of its human capital, immigration was intended to spur regime collapse.

This chapter summarizes general US immigration and refugee policies, backdrop for understanding Cuban immigration policies during the first two decades of Castro's rule that are then detailed in this chapter.<sup>3</sup> While the United States restricted admission of most foreigners, that was not the case with Cubans. Its welcoming of Cubans was a "soft power" Cold War-driven effort to contain Soviet influence and protect US interests ninety miles offshore. Successive presidents also offered Cubans new entitlements to address problems that earlier entitlements generated or left unresolved, and to address new problems that arose. The chapter proceeds to detail how first the Eisenhower and then the Kennedy administrations turned to Cubans they had admitted for one "hard power" effort to overthrow Castro, and how they tried to control anti-Castro undertakings of the Cubans they admitted without success. The Cubans

<sup>2</sup> See Oscar Trelles, "Cuba and the United States: A Review of the Immigration Laws of the Two Countries before and during the Castro Government," *Immigration & Nationality Law Review* (1979–80): 26–48.

<sup>3</sup> For a summary of US immigration and refugee laws, see "The New Immigration," *The Annals of the American Academy of Political Science* (September 1966), especially pp. 1, 48. On US commitment to admit refugees only sparingly (Cubans aside), see David Scott FitzGerald, *Refuge beyond Reach: How Rich Democracies Repel Asylum Seekers* (New York: Oxford University Press, 2019).

*The Making of Cuban Immigration Exceptionalism* 3

to whom they turned had their own ambitions and own views about how to end Castro's rule. Cuban émigrés sought to use and not merely be used by the United States. Washington even had difficulty controlling which Cubans came. Who immigrated quickly came to hinge on Cuban government exit policies, on which Cubans wished to leave, and on the willingness of earlier immigrants to assist family they had left behind. Combined, the Cuban government, ordinary Cubans, and their family members who preceded them to the United States limited Washington's control over Cuban immigration: immigration that, in principle, Congress (and presidents under exceptional conditions) regulated.

SUMMARY OF IMMIGRATION AND REFUGEE POLICIES

Over the years, the United States selectively admitted foreign-born people. As is well known, historically, immigration policies favored White northern Europeans. However, as the country began to industrialize in the late 1880s, southern and eastern Europeans were welcomed to provide needed unskilled labor for factories. By the 1920s, mechanization of production reduced the demand for labor, especially for unskilled labor, such that native-born people resented immigrants who competed with them for jobs in the changed labor market. Racist nativist sentiment led Congress to limit immigration in a manner favoring light-skinned people from northern Europe (while barring certain Asians altogether). Fortunately for Western Hemisphere peoples at the time, including Cubans, they were exempt from newly instituted country admissions quotas.

The United States was more selective in the refugees it admitted.<sup>4</sup> Despite its European bias in refugee admissions, it welcomed few Jews and others seeking refuge from Nazism, which led millions of them to die in the Holocaust. As a result, after World War II, political pressure built up for the United States to admit its "fair share" of refugees from the war. In response, Congress passed a series of laws to admit refugees, independent of laws regulating general immigration. The laws, each with expiration dates, allowed for the admission of selective Europeans displaced by the war.<sup>5</sup> As Washington focused on the emergent Cold War and

<sup>4</sup> FitzGerald, *Refuge beyond Reach*. Refugees accounted for one-fifth of all immigrants admitted between 1945 and 1966. After Castro came to power in 1959, Cubans accounted for the vast majority of those the United States officially admitted as refugees.

<sup>5</sup> For example, Congress passed the Displaced Persons Act of 1948, the Refugee Relief Act of 1953, the Refugee-Escapee Act of 1957, and the Fair Share Refugee Act of 1960.

competition with the Soviet Union for global influence, Congress proceeded to pass legislation to also admit refugees from communist countries, on which it based special legislation for Cubans.<sup>6</sup> Several laws were passed under Eisenhower's presidency, but, relevant to Cubans, after Kennedy assumed the presidency and Castro officially allied with the Soviet Union, Congress enacted the Migration and Refugee Assistance Act of 1962. Cubans became the key beneficiaries of this new legislation.<sup>7</sup>

Amid post-World War II international concern about refugees, the United Nations issued the 1951 Convention Relating to the Status of Refugees. It defined refugees as persons who fled their homeland because of events that occurred before January 1951, owing to persecution based on their race, religion, nationality, membership in a particular social group, or political views. On the principle of *non-refoulement*, such persons were not to be forced to return to the lands from which they had fled. Seventeen years later, the United States ratified an extension of the Convention, the Protocol Relating to the Status of Refugees, which eliminated the 1951 cutoff date for qualification for refugee status, and extended the applicability of the Convention to non-European victims of persecution. The Convention, as modified by the Protocol, serves as the "Bill of Rights" for refugees. To date, it is considered the most important international refugee document. Building on the principles of this "Bill of Rights," Congress passed the Refugee Act of 1980, which officially eliminated previous political, racial, and country-of-origin biases in US refugee policy and committed the president, in consultation with Congress, to agree on the number of refugees to be admitted annually from different regions of the world, including from Latin America, and, accordingly, from Cuba. The legislation is described in detail in Chapter 3 as it applies to Cubans.

Paralleling its concern with refugees, after World War II, Congress passed legislation to correct earlier biases in general immigration policy. Immigrants are persons admitted for whatever reason, in contrast to refugees who fled actual or likely persecution. In 1952, Congress passed the Immigration and Nationality Act (INA), known commonly as the McCarran-Walter Act after its key sponsors, which slightly modified the national origins admissions policy that had been in effect since the 1920s. It also ended earlier exclusion of Asians. Relevant to Cubans, it exempted

<sup>6</sup> See Trelles, "Cuba and the United States."

<sup>7</sup> US Senate, "Assistance to Refugees, Migrants, and Escapees," 87th Congress, 1st session, Report 989 (September 12, 1961).

*The Making of Cuban Immigration Exceptionalism* 5

Western, but not Eastern, Hemisphere peoples from country quotas. So, too, did it codify Attorney General parole authority to admit persons temporarily for “urgent humanitarian reasons or significant public benefit” on a case-by-case basis, independent of Congress-controlled admissions. Persons paroled into the country were expected to return to their homeland after the purpose of their parole was served. Eisenhower, on assuming the presidency in 1953, immediately (re)interpreted Executive Branch parole authority. He did so, in the context of the emergent Cold War, first to admit Hungarians who fled a failed uprising against their Soviet-allied communist government, and then to admit Cubans after Castro assumed power in 1959. Subsequent presidents will be shown in this book to have followed Eisenhower’s example and allowed their Attorneys General to parole Cubans into the United States on the basis of their national origins, though not on a case-by-case basis, as specified in the INA.<sup>8</sup> Parole became the main basis by which Cubans were admitted into the United States, both before and after passage of the Refugee Act of 1980.

In 1965, during Johnson’s presidency, Congress amended the INA with Public Law (P.L.) 89-236, popularly known as the Hart–Celler Act, after the names of its key sponsors. This legislation capped Western Hemisphere yearly admissions for the first time, at 120,000, without assigning country quotas.<sup>9</sup> Most significantly, the 1965 reform replaced the much-criticized racist national origins quota system with a seven-category non-country-specific “preference system.” The preference system prioritized admission of relatives of US citizens and lawful permanent residents, and, secondly, persons with skills who had secured certification from the Secretary of Labor that they addressed a labor shortage. The seventh category permitted conditional annual admission of 10,200 persons who either had fled persecution or were uprooted because of natural

<sup>8</sup> Subsequent presidents paroled Chinese and Vietnamese communist escapees into the United States, but only during limited, delineated periods of time. See Laura Murray-Tjan, “‘Conditional Admission’ and Other Mysteries: Setting the Record Straight on the ‘Admission’ Status of Refugees and Asylees,” *N.Y.U. Journal of Public Policy* 37 (2013–2014), p.48.

<sup>9</sup> At the same time, P.L. 89-236 capped total annual immigration from Eastern Hemisphere countries at 170,000, and from individual countries in the region at 20,000. It also entitled Eastern Hemisphere entrants on non-immigration visas to apply for lawful permanent residence (LPR) without having to leave the country. In contrast, it specified that persons from the Western Hemisphere needed to apply from abroad for LPR rights.

disasters.<sup>10</sup> This marked the first time that the United States committed to admit refugees on a routine, annual basis.<sup>11</sup> The seventh category, however, was dropped in 1980 with passage of the Refugee Act.

President Johnson signed the new immigration bill when delivering a well-crafted speech against the backdrop of the Statue of Liberty. In his words, “We will never again shadow the gate to the American Nation with the twin barriers of prejudice and privilege... [T]hose who do come will come because of what they are, and not because of the land from which they sprung.”<sup>12</sup> President Johnson added that the national origins system had violated the basic principle of American democracy to value and reward “each man on the basis of his merit as a man.” Officially, nation of birth remained important only in that the 1965 reform included an annual country admissions cap on people from the Eastern Hemisphere.

While the new legislation, in effect though not stated intent, continued the European bias in immigration of the past by prioritizing admission of persons with family already in the country, European interest in immigration to the United States tapered off around the time that the Hart–Celler Act was enacted. It tapered off as opportunities in Europe expanded first with recuperation from the devastation of World War II and then with the formation of the European Union. Also, the fertility rate in Europe declined, which reduced demographic pressures to emigrate. Consequently, the Hart–Celler Act facilitated family-based migration from non-European countries, potentially advantageous to Cubans. However, the signing ceremony took on particular significance for Cubans in that President Johnson used the occasion to extend an

<sup>10</sup> The first, second, fourth, and fifth preference categories apply to relatives of US citizens and legal permanent residents. The third and sixth categories are occupation related. The seventh category allowed for conditional entry of a select number of refugees that drew on the parole procedure incorporated into the Fair Share Refugee Act. On usage of parole, see the John Fitzgerald Kennedy Presidential Library (JFKPL), White House Central File (WHCF), 19-2, Folder: Displaced Persons-Refugees, “Caribbean Crisis: A Danger and an Opportunity,” prepared by the Special Sub-committee on Caribbean Refugee Problem, the International Rescue Committee, New York City (January 30, 1961), p. 15, Box 636.

<sup>11</sup> Initially, persecuted peoples were admitted on only a provisional basis. After two years, they could apply for lawful permanent residence if they demonstrated that they did not subject the United States to outside pressure. Murray-Tjan, “‘Conditional Admission’ and Other Mysteries,” p. 51.

<sup>12</sup> Lyndon Baines Johnson Presidential Library (LBJPL), *Public Papers of the Presidents of the United States: Lyndon B. Johnson*, “Remarks” at the Signing of the Immigration Bill, Liberty Island, New York, October 3, 1965.

open-ended invitation to Cubans, described later in this chapter, independent of the preference system.

Amendments to the INA in 1976, under President Gerald Ford, removed differences in immigration entitlements for people from the Western and Eastern Hemispheres. They set a 20,000-person yearly country cap on Western as well as Eastern Hemisphere immigration, and specified that Western, along with Eastern, Hemisphere people in the United States on non-immigration visas could apply for lawful permanent residency without having to leave the country to apply from abroad. Specific to Cuba, the 1976 INA Amendments denoted that, when adjusting the status of Cubans to lawful permanent residence, the number of entry visas granted to non-Cubans would not be reduced. Accordingly, admissions of Cubans would not be at the expense of others from the hemisphere.

Subsequent legislation focused on strengthening immigration enforcement, exclusion, and border security while selectively expanding opportunities for immigration. This was true of the Immigration Reform and Control Act of 1986 (IRCA), the Immigration Act of 1990, and the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA). Their relevance for Cubans, and for Haitians with whom Cuban experiences are contrasted in this book, is detailed in the chapters that address the administrations under which each of these laws were enacted.

Thus, in the course of the twentieth century, Congress enacted legislation that typically favored immigrants and refugees from light-skinned northern European countries. Although people of the Western Hemisphere were initially exempt from regulations imposed on Eastern Hemisphere people, in the course of the twentieth century, legislation restricted their entry entitlements as well and subjected them to criminalization, detention, and deportation.<sup>13</sup> While Congress officially ended racially biased, country-based immigration admissions in 1965, and subsequently broadened eligibility for refugee admissions, after 1959 Congress as well as presidents implemented policies favoring Cubans over other foreign-born people, including over others from the Americas. Cubans, however, will be shown to have been favored more under certain administrations than others: including long after the Cold War's end ceased to justify privileging them as communist escapees.

<sup>13</sup> See Mae Ngai, *Impossible Subjects: Illegal Aliens and the Making of Modern America* (Princeton: Princeton University Press, 2004).

THE MAKING OF SPECIAL BASES TO ADMIT CUBANS,  
1959 TO 1965

While Castro assumed power with widespread support, the United States welcomed opponents of the radical makeover of Cuba that he oversaw. First welcomed were those closely associated with the discredited Batista regime, followed by those who opposed the revolution's Marxist-Leninist turn. Some fled persecution and fear of persecution. However, increasing numbers of Cubans fled the nationalization of businesses, schools, country clubs, and the like, which deprived the upper and middle classes of their livelihood and lifestyle.

President Eisenhower, followed by Presidents Kennedy and Johnson, initiated ways to admit Cubans that circumvented congressional-set immigration restrictions. They implemented measures to admit Cubans expeditiously and imagined Cubans in ways that granted them special entry prerogatives. The three presidents also convinced Congress to finance assistance to Cubans on their arrival. They piled new entitlements onto old as conditions changed. How did they do so?

### Imagined Tourists

With the State Department issuing only limited numbers of immigration visas, and with the visa application process time-consuming and cumbersome, the Eisenhower administration permitted Cubans to come with easier-to-obtain nonimmigration visas: mainly as tourists, but secondarily as students. Tourist visas were valid for four years for multiple entries, lasting a month per each visit. Already during the Batista era, the United States had issued tourist visas to upper- and middle-class Cubans who vacationed and shopped in the United States, infatuated with the American way of life.<sup>14</sup> However, toward the end of 1960, the Eisenhower administration issued an unprecedented 1,600 tourist visas to Cubans weekly,<sup>15</sup> and it did so in an expedited, pro-forma manner.<sup>16</sup>

<sup>14</sup> Louis Pérez, *On Becoming Cuban: Identity, Nationality, and Culture* (Chapel Hill: University of North Carolina Press, 1999).

<sup>15</sup> Eight to ten times that number applied for tourist visas. See JFKPL, WHCF, 19-2, "Caribbean Crisis."

<sup>16</sup> John Scanlan and Gilbert Loescher, "U.S. Foreign Policy, 1959–80: Impact on Refugee Flow from Cuba," *Annals of the American Academy of Political and Social Science* 467, special issue "The Global Refugee Problem: U.S. and World Response" (May 1983), p. 119.

*The Making of Cuban Immigration Exceptionalism* 9

The Eisenhower administration understood that the Cubans to whom it issued the visas were not typical tourists. Nonetheless, tourist visas provided a basis for admission. When the tourist visas expired, the Eisenhower administration granted the Cubans “involuntary indefinite departure” or “extended voluntary departure” status that spared them the risk of deportation. If deported, US law would have barred their reentry for ten years; at the time, it would also have likely subjected returnees to persecution in Cuba for having fled the revolution, in which case the United States would have violated the principle of *non-refoulement*.

### Imagined Refugees

The Eisenhower administration also allowed Cubans to use tourist visas differently after Castro assumed power, and it allowed them to use visas differently than other nationals. It (re)imagined Cubans as “refugee-tourists,”<sup>17</sup> “tourists” transformed into “refugees” in the United States, where they were safe from persecution.<sup>18</sup> When visitor visas expired, Cubans could officially become refugees. As refugees, they would not be forced to return to Cuba.

If the United States only reluctantly and belatedly admitted Jewish refugees who fled persecution during World War II, the Eisenhower administration was quick to imagine Cubans as refugees, even when their lifestyle but not lives were at risk. Less than half of the Cubans that the United States admitted had fled persecution, the near-universally recognized criterion for refugee status, as previously noted.<sup>19</sup> As imagined, Cubans enjoyed rights to work, they were spared the risk of deportation, and they qualified for the most generous set of benefits the United States had ever offered immigrants or refugees.

However, a deterioration in relations between the United States and Cuba that led the two countries to sever diplomatic ties on January 3, 1961, weeks before Eisenhower left office, put a stop to “refugee tourism.” With the shutdown of the US Embassy in Havana, the United States could no longer issue visas of any type. Cubans with still-valid nonimmigration visas could continue to come legally to the United States, but only until their visas expired. At the time, approximately 100,000 Cubans still

<sup>17</sup> JFKPL, WHCF 19-2, “Caribbean Crisis,” p. 14.      <sup>18</sup> *Ibid.*

<sup>19</sup> Jorge Domínguez “Cooperating with the Enemy? U.S. Immigration Policies toward Cuba,” in Christopher Mitchell (ed.), *Western Hemisphere Immigration and United States Foreign Policy* (University Park: Pennsylvania State Press, 1992), pp. 31–79.

had usable multiple-entry visas.<sup>20</sup> The embassy shutdown also meant that Cubans could not apply for the more difficult-to-attain immigration visas. For immigration visas, the United States required individuals to be screened abroad, a service it ceased to be able to offer in Cuba.

On assuming the presidency later in January, Kennedy continued to perceive Cubans as refugees. His administration admitted more Cubans as refugees, who it entitled to an expanded array of resettlement benefits.<sup>21</sup> During its first year it admitted 33,000 Cubans, more than the Eisenhower administration had admitted in 1959 and 1960 combined.<sup>22</sup> The benefits offered the new arrivals are described in Chapter 2.

### **Visa Regulation Bending: The Granting of Visa Waivers, Admission with Fraudulently Dated Visas, and Admission of Visaless Cubans**

While the embassy shutdown might have put a halt to immigration, President Kennedy invented new ways to enable Cubans to come. Some bases were legally questionable.

The Kennedy administration, for one, granted Cubans unique visa waivers. It permitted commercial airlines to forward requests to the Attorney General and the Secretary of State to waive passport and visa requirements for Cubans. Cubans thereby could be processed for admission after arrival in the United States, while other nationals needed to be screened abroad. The Kennedy administration also authorized nongovernmental organizations, such as the Catholic Welfare Bureau and the International Rescue Committee, to issue visa waivers. In 1962, his administration granted as many as 1,800 visa waivers to Cubans in a week, more visa waivers than the number of tourist visas the Eisenhower administration had issued to Cubans as nontourists. US officials rejected only about 1 percent of all visa waiver requests.<sup>23</sup>

<sup>20</sup> JFKPL, National Security Files: Countries, Cuba, Cuba, Subjects Exiles, Folder: "Annex A: Control of Exile Movement," Box 48.

<sup>21</sup> Foreign Relations of the United States (FRUS), *Cuba 1961–1963*, National Security Action #2422, "U.S. Policy toward Cuba," memorandum for NSC Action, May 4, 1961, p. 482.

<sup>22</sup> Félix Masud-Piloto, *From Welcomed Exiles to Illegal Immigrants: Cuban Migration to the U.S., 1959–1995* (Lanham, MD: Rowman & Littlefield, 1996), p. 52.

<sup>23</sup> Domínguez, "Cooperating with the Enemy?," p. 41; JFKPL, Abba Schwartz Papers, Folder: State Department Security 1963–1965, Testimony of Abba Schwartz August 15, 1964, Box 6.