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Why Did An Obama Administration NSC Official Perpetrate A Falsehood To “The Hill”?

He argues that the *statutory* speed limit for Republic of Cuba-related policy and regulatory changes was reached by 20 January 2017 and there was no opportunity to exceed it... in reality, the Obama Administration was doing 35 mph in a 55 mph zone for 766 days. Couldn't it have at least considered 45 mph or braved 60 mph?

An argument as to *strategy versus statute* would have a foundation; one that could be argued. This is not that argument. This is a progressive re-write of history to disguise culpability for a dissolving attempt at normalized relations between the United States and Republic of Cuba.

United States companies appreciated and continue to appreciate the risks relating to commercial engagement with the Republic of Cuba; and some were prepared to accept those risks; the Obama Administration unilaterally created limitations as to how the United States private sector defined opportunity. That wasn't their job.

The policy and regulatory changes that were critical for commercial engagement with the Republic of Cuba, which would have likely compelled the government of the Republic of Cuba to accept that engagement, were denied by the Obama Administration.

The comments by the individual are likened to knowingly spreading as fertilizer falsehoods with an expectation that the more they are spread, the more factual they will become: the Obama Administration did all that it could do; applaud those efforts.

The Trump Administration can do what it will because of what the Obama Administration and Castro Administration did not do... by choice, not by law. Most of the “*disadvantages*” to United States companies were inflicted by the Obama Administration.

The comments by the individual are efforts to promote legislative activity to then profit from it as a consultant; presenting as a hero to those who sought more- i.e., Obama Administration staff did all that was possible.

The article on 26 July 2017 in **The Hill** provided a sound narrative, sadly one of too few, as to what the Obama Administration did and did not do. There are, however, twofold concerns with the article. Important to note that the Castro Administration shares culpability for what did not happen.

First, United States companies had 766 days throughout which to engage with the Republic of Cuba; and the expectation by many beginning at the end of 2015 and continuing through the first ten months (or more) of 2016 was for an 8 November 2016 transition from one member of the Democrat Party to another member of the Democrat Party. The focus is about fluidity rather than point-to-point.

Most United States companies were not hesitant as they did not expect disruption to Obama Administration policies and regulations from its successor; quite the contrary- they expected at minimum continuity and at maximum expansion.

That United States companies were hesitant because of the potential that policies and regulations might be reversed is a component of the hesitancy; the primary reason for hesitancy was that the Obama Administration did not do more *throughout* the 766 days despite advocacy to do so. More should have been done in a **front-loaded manner** to provide ample opportunity for United States companies to present to and contract with the government of the Republic of Cuba well-before the third quarter of 2016. The

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Obama Administration never planned for an end to their legacy-building efforts; they were wrong to do so. They waited too long. They never did what was difficult.

Second, the two concluding paragraphs of the article provide, without challenge or refute, that the reason for what the Obama Administration did not do was due to the constraint of a statute or statutes, rather than due to a *constraint of vision*.

Mr. Mark Feierstein, Senior Director for Western Hemisphere affairs at the National Security Council (NSC) during the Obama Administration, has been asked to provide the statute(s) that he posited as the reason(s) for what the Obama Administration did not do with respect to policy and regulatory changes relating to the Republic of Cuba. He has chosen not to respond. That's not surprising. What he was quoted as saying was demonstrably untrue, was false; what some might consider a lie.

Some of what the Obama Administration did (and partially didn't) do:

- authorize only two commercial (agricultural) **imports**- coffee and charcoal; there is no statutory limitation as to number. There is no statute that proscribes zero products or one product or two products or three products or more. There is no statute that requires coffee instead of mango or tobacco; charcoal instead of bricks or alcoholic beverages.
- 50% of what was required for **direct correspondent banking**- Republic of Cuba government-operated banks were not permitted to have accounts with United States-based banks, but United States-based banks were permitted to have accounts with Republic of Cuba government-operated banks. Result was continuation of an inefficient and expensive three-country process to send and receive funds relating to authorized transactions. One small United States bank located in the state of Florida has an account with a Republic of Cuba government-operated bank; to send and receive funds, transactions use a Panama-based bank, which receives revenues from the transactions. And the statute(s) that required this?
- limited removal of **international financial transaction** restrictions (complete removal would have encouraged large-scale banking and credit card/charge card/debit card activity; three United States banks have authorized their Mastercard-branded products. No Visa. No American Express. No Discover).
- two meetings about the 5,913 **certified claims** in 2,923 days (766 days if calculated from 17 December 2014). The Libertad Act of 1996 encourages the settlement of the certified claims.
- Cabinet Secretaries disagreeing about whether their **delegations** could include representatives of United States companies. Two said no; one said yes. Was one in violation of United States law?

None of the above-referenced were prohibited by a statute or statutes. They were limited by timid decision, not limited by law. The driving equivalent is choosing to travel at 35 mph when the speed limit is 55 mph. At least two results: impeding traffic which wants to move at a faster pace and increasing the time until reaching a destination. *For United States companies, they were left with less opportunity to decide and fewer opportunities about which to decide.*

Each of the following activities are authorized by the Office of Foreign Assets Control (**OFAC**) of the United States Department of the Treasury, Bureau of Industry and Security (**BIS**) of the United States Department of Commerce, and United States Department of State. Although permitted by regulations and policies implemented during the Obama Administration and thus far *uninterrupted* during the Trump Administration, the Castro Administration has not permitted United States companies to have:

- representative offices (other than airlines)
- retail stores
- distribution centers
- assembly facilities

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- manufacturing operations
- ferry services (even on a trial basis)
- permit United States companies to directly export to the 200+ categories of licensed businesses; products could have payment/financing terms and include machinery, agricultural equipment, restaurant equipment, beauty salon supplies, and many other products

If Mr. Feierstein had said that because the Castro Administration had not permitted all or most or some of these activities, the Obama Administration believed that further expansive policy and regulatory changes were inappropriate, there would be an argument for that position. This is not, however, what Mr. Feierstein presented and what The Hill reported.

It's revisionism. That's being polite.

In Cuba, Obama policies only went so far

BY MELANIE ZANONA - 07/26/17

HAVANA — Hanging in the office of a mechanics garage in central Havana, where Julio Álvarez has made a living off of renovating classic American cars and chauffeuring tourists around the island, a round yellow sign reads: “We use genuine Chevrolet parts.”

But those words do little to convey how hard Álvarez works behind the scenes to obtain American goods from the United States — a chronic challenge facing many Cubans despite a series of regulatory changes from President Obama designed to ease restrictions on trade and commerce between the U.S. and Cuba.

While Obama made it legal for Cuban nationals to open bank accounts in the U.S. last March, private Cuban businesses were not authorized to set up their own financial accounts in the country. There are also limited services and restrictions on the allowed transactions for Cubans who do have U.S. accounts.

Speaking through a translator, Álvarez explained that he has to purchase automobile parts in America using U.S. dollars, but as a business owner, he isn't allowed to have his own bank account in the country. That means he has to borrow someone else's credit card in the U.S. — a process that he says ends up costing him 20 percent more.

“The only way I can restore all these cars is importing parts from the U.S. ... But I don't have a credit card or bank account to pay the people who sell the parts,” Álvarez said. “So I need to use a credit card from a friend. And normally people charge you to use their card.”

“It's very expensive to give life to these cars,” he added.

One month after President Trump announced that he was reversing some of Obama's efforts to thaw relations between Washington and Havana, it's clear that things still haven't even fully melted yet.

Cuban entrepreneurs, economists and officials — who support lifting the embargo — acknowledged during a three-day visit to Cuba's capital by The Hill that some of Obama's policy changes toward the country didn't go as far as they could have.

Part of the reason is that the Obama administration had only been implementing changes for two years before Trump took over. But it's also because Obama, who was eager to push ahead with the historic rapprochement, made changes unilaterally, meaning some of his policies lacked the teeth to be fully realized.

One example is the promise that American cash and credit would flow through the country. In an effort to make it easier for Americans to travel to Cuba, Obama made it legal for banks to allow U.S. travelers to use debit and credit cards while visiting. Yet years after the move, only a small Florida-based bank has actually followed through.

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Nervous financial institutions have been afraid to operate in Cuba because they are worried that Obama's policies, which were all done through executive order, could just as easily be undone by Trump.

The failure to allow the transactions has created headaches for American travelers, who should carry around huge wads of cash in Cuba. It's also an issue for U.S. companies trying to do business there.

U.S. hotels that have opened up in Cuba have to use third-party banks to secure the necessary financing.

And Airbnb, which considers Cuba its fastest-growing market, uses intermediaries to pay Cuban hosts. Sometimes that involves delivering money directly to a host's doorstep, a process that can take 15 days and may be impractical.

"They pay us in cash. Airbnb sends money to all the Cubans," said Julia de la Rosa, co-owner of La Rosa de Ortega B&B, which is listed on Airbnb. "It is a very complex mechanism."

In his package of regulatory changes announced last year, Obama also allowed so-called U-turn transactions, which would permit U.S. banks to process international transactions between Cuba and other non-U.S. parties. That has been a top priority for Cuba, since most dollar-denominated transactions are cleared through the U.S. financial system.

But even though the banks are allowed to process such transactions, they aren't required to do so, and thus have been reluctant to handle them amid the cloud of uncertainty.

The banks are likely wary of facing hefty fines. The U.S. has penalized international banks in the past for violating U.S. sanctions because of processing Cuban financial transactions.

"Former President Obama issued a measure to make it possible, the use of the U.S. dollar, the U.S. currency, in international transactions related to Cuba. ... It couldn't be implemented," said María de la Luz B'Hamel, director of North American commercial policy for Cuba's Ministry of Foreign Trade and Investment.

"Because at the same time, the Treasury Department did not stop announcing and applying sanctions and measures against companies and banks because of transactions that they had in the past. ... By nature, [banks] are conservative, but if they are threatened in that way, it's even worse."

Even before Trump was sworn into office, Cubans had been pressing the White House to offer more flexibility when it comes to bank accounts and to provide greater assurances to U.S. financial organizations that have been too scared to engage with Cuba.

"We had been discussing this when Obama's administration came," Álvarez said. "We have talked to two banks, but nothing has been done."

Challenges in shipping

Another knotty issue is allowing goods and packages to be shipped to Cuba from the U.S. The U.S. Postal Service resumed direct mail service to Cuba last March, but packages and gifts are subject to weight restrictions, and their retail value can't exceed \$800. That's why it is common to see people in the airport lugging toys, home goods and other U.S. products onto Cuba-bound flights.

The Obama administration did, however, authorize sending direct cargo. FedEx got approval to start scheduled flights to Cuba beginning this April. But the cargo company had to get an extension until October 2017, citing "operational challenges."

"The extension ... is needed in order to address operational challenges in the Cuban market," FedEx said in a statement to reporters at the time. "FedEx is continuing to work to establish ground support services necessary for express delivery services for our customers." Cubans are thus still facing hurdles in trying to obtain goods from the U.S.

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Álvarez, whose fleet of classic cars includes a black 1959 Chevy Impala and pink 1955 Chevy Bel Air, says he can't always fly to America to personally pick up automobile parts that he has purchased. In that case, Álvarez has to first have the parts shipped to Panama and then shipped to Cuba, which he says can slow down his business. "It can take at least six months to get parts in Cuba," Álvarez said.

While Cubans had pressed for more changes, those who were involved in the policymaking said they believe the Obama administration went as far as it legally could without violating the embargo — something only Congress could lift.

"In the Obama administration, we went as far as the law would allow in making it easier to travel to and engage in commerce with Cuba," said Mark Feierstein, Obama's senior director for Western Hemisphere affairs at the National Security Council.

"Now it's up to Congress, which has the authority to lift the embargo and end a policy that hurts the Cuban people and disadvantages American companies and workers."

<http://thehill.com/policy/transportation/343754-in-cuba-obama-policies-only-went-so-far>