



January 19, 2023

President Joseph Biden  
The White House  
1600 Pennsylvania Avenue NW  
Washington, DC 20500

Dear President Biden,

The undersigned are lawyers who write collectively with concern at the continued placement of Cuba on the list of State Sponsors of Terror (“SSOT”), a designation that was made by the State Department during the last week of the Trump administration. Recently, a letter was sent to you by 18 former heads of state asking that the United States lift its embargo and that Cuba be removed from the SSOT list.<sup>1</sup> In addition, petitions signed by hundreds of civil society organizations and thousands of citizens have requested the same. Nearly half-way into your presidency and there has been no outward gesture or recognition that Cuba’s placement on this list was ever merited, especially considering that it had been removed just a few years prior by the Obama-Biden administration. There is no legal or moral justification for Cuba to remain on the State Sponsors of Terrorism list.

The State Department has said that they are undertaking a review of the criteria used by the former Secretary of State Mike Pompeo, which justified Cuba’s placement by noting that Cuba refused to extradite members of the Ejército de Liberación Nacional (“ELN”) who had traveled to Cuba to participate in a formal peace dialogue with the Colombian government. Cuba cited its clear obligation as a guarantor country for peace negotiations that they had an obligation to guarantee the well-being and safety of those who participated in the negotiations, and extradition both violated that obligation and also compromised the possibility of future peace talks. In addition, the Colombian constitution<sup>2</sup> prohibits extradition for political crimes, which was reflected in the extradition treaty between Colombia and Cuba.<sup>3</sup> Colombian President Gustavo

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<sup>1</sup> See Megan Janetsky, *Former Latin American leaders urge US change on Cuba*, Associated Press (Nov. 1, 2022), <https://apnews.com/article/hurricanes-biden-colombia-caribbean-united-states-222dbeb17eb63388b394ef835427d8cb>.

<sup>2</sup> Colombian Const., tit. 2, art. 35.

<sup>3</sup> Tratado de Extradicción, *promulgado por decreto* 1817 de 1937, Art. IV.

Petro has specifically requested that the United States remove Cuba from the SSOT list and has asked Cuba to resume its role as a guarantor country for peace dialogue yet again with the ELN. While the undersigned dispute the original rationale given for justifying Cuba's addition to the SSOT list, even if it had, it clearly no longer does.

In addition, Secretary of State Pompeo's formal statement said that Cuba harbors U.S. fugitives who are wanted for political violence for acts committed nearly 50 years ago. In order to meet the statutory definition laid out by the three federal statutes that establish a country's designation as a state sponsor of terror, an act must both meet the definition of "terrorism" and be international in character. Cuba meets neither of these.

Undoubtedly, this point of concern was raised and resolved by the Obama administration when Cuba was removed from the SSOT list. Even in the absence of that possibility, international law clearly prohibits extradition for acts of political violence. To the extent that the 1904 extradition treaty between Cuba and the United States remains in effect and continues to be honored by both parties, it contains a standard political offense exception.<sup>4</sup> This exception is premised upon a concept familiar to the United States, which is that individuals have a "right to resort to political activism to foster political change."<sup>5</sup> Indeed, this is precisely the type of "activism" that the United States designates millions of dollars to each year for regime change in Cuba.<sup>6</sup> Chris Dodd, the new Special Presidential Advisor for Latin America that you just appointed, has stated that it is a false premise to equate political violence with terrorism.<sup>7</sup> In addition, Cuba's penal code prohibits extradition for crimes of a political nature.

A review of policy practice by the United States also reveals that failure to extradite a U.S. citizen wanted to face criminal charges has not been used as justification for placing a country on the SSOT list, aside from Cuba. Policy - and electoral - concerns are what appear to have always kept Cuba on the SSOT list, rather than actually meeting the legal requirements to be on there. As former Special Advisor on Cuba affairs to President Clinton, Richard Nuccio, noted, "Frankly, I don't know anyone in or outside of government who believes in private that Cuba belongs on the terrorist list. People who defend it know it is a political calculation. It keeps a certain part of the voting public in Florida happy, and it doesn't cost anything." Given the tremendous economic, social, humanitarian and commercial effect placement on the SSOT list

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<sup>4</sup> Treaty between the United States and Cuba for the mutual extradition of fugitives from justice, art. VI, *proclaimed* Feb. 8, 1905 ("A fugitive criminal shall not be surrendered if the offense in respect of which his surrender is demanded to be of a political character...If any question shall arise as to whether a case comes within the provisions of this article, the decision of the authorities of the government on which the demand for surrender is made...shall be final.")

<sup>5</sup> Robert Muse, *Part 2: The unlawful basis for Cuba's designation as a State Sponsor of Terrorism*, Global Americans (Mar. 2, 2021), <https://theglobalamericans.org/2021/03/part-2-the-unlawful-basis-for-cubas-designation-as-a-state-sponsor-of-terrorism/>.

<sup>6</sup> <https://foreignassistance.gov/cd/cuba/current/obligations/1>

<sup>7</sup> 132 Congressional Record, S9252 (daily ed. July 17, 1986), <https://www.govinfo.gov/content/pkg/GPO-CRECB-1986-pt12/pdf/GPO-CRECB-1986-pt12-2-1.pdf>.

has had for the Cuban people, maintaining it for such pretextual reasons continues to be a stain on U.S. foreign policy.<sup>8</sup>

We respectfully urge the administration to immediately initiate a review and notification process to remove Cuba from the SSOT list.

Sincerely,

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<sup>8</sup> The annual vote by the United Nations General Assembly on a resolution condemning the embargo maintained by the United States against Cuba garners support of nearly every member nation. This year's resolution included mention of the SSOT list. The vote in 2022 was 185-2 (the United States and Israel voted against), with two abstentions. See U.N.G.A. Doc. A/76/405 and U.N.G.A. Doc. A/77/L.5, *Necessity of ending the economic, commercial and financial embargo imposed by the United States of America against Cuba*, 20 January 2022; see also Edith Lederer, *UN votes overwhelmingly to condemn US embargo of Cuba*, Associated Press (Nov. 3, 2022), <https://apnews.com/article/middle-east-business-cuba-israel-europe-bf38ea2b62324cbd9ed3ce10905883d8>.

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