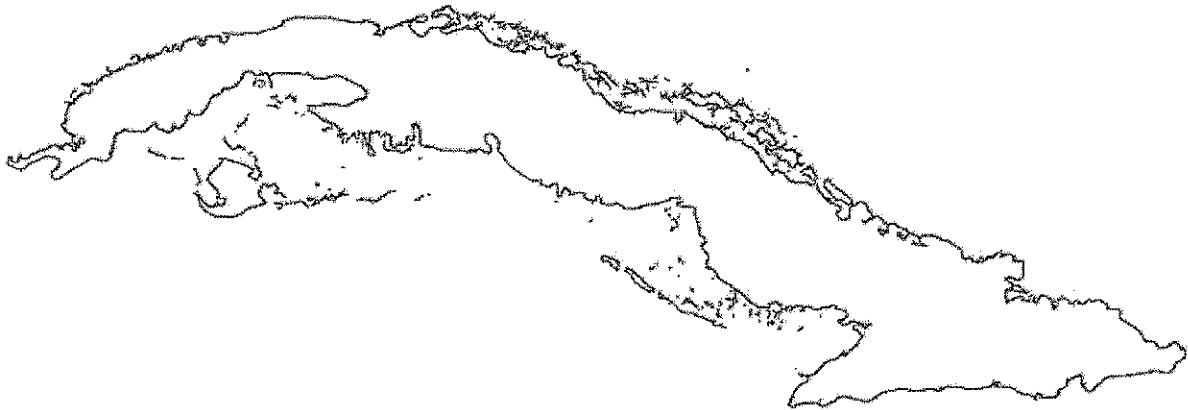


KNOW BEFORE YOU GO:



Restrictions on Travel to Cuba

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 centerforconstitutionalrights

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KNOW BEFORE YOU GO: **Restrictions on Travel to Cuba**

Please note: This booklet summarizes Cuba travel restrictions and alerts Cuba travelers to some of the current legal requirements and potential legal consequences they face. It is not a complete discussion of the applicable laws and regulations. It does not cover all possible questions, concerns and contingencies. This booklet was last updated on September 25, 2009. Since laws, regulations, and their interpretation often change, this information may be outdated by the time you read it. The Center for Constitutional Rights does not guarantee the accuracy of the information contained in this booklet as of any point in time.

Make sure to consult an attorney before planning any trip to Cuba. Do not rely on these materials without first seeking the advice of an attorney about your particular situation and facts. Only a licensed attorney, reviewing your individual facts, may render legal advice. This booklet is provided as a public resource for information purposes only. It is not legal advice and should not be relied on in making any decisions concerning travel to Cuba or transactions with Cuban nationals. The Center for Constitutional Rights no longer accepts Cuba travel clients for direct representation, and nothing in this booklet should be taken to create an attorney-client relationship between you and the Center.

If you need help finding an individual attorney to render legal advice regarding your situation, please call the Center's Cuba Travel Project at (212) 614-6470.



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I. Introduction

The laws and regulations relating to Cuba travel are complex, and in many respects vague and not subject to settled interpretations. Over the years, enforcement of these laws has been inconsistent, indeed haphazard, affecting only a small portion of the many thousands of annual travelers to Cuba. Knowing and exercising your rights are powerful protections against potential penalties that travelers may face for violating the U.S. embargo that restricts travel to Cuba. It is especially important for non-citizens to consult with an immigration expert about the possible impact of a Cuba trip on their status in the U.S.

This information is geared toward Cuba travelers who wish to avoid confrontation with the government. We recognize, however, that some travelers knowingly choose to make no effort either to comply with the embargo, possibly as an act of civil disobedience, or to reduce their risk of becoming subject to government scrutiny. We at CCR respect that stance and are ready and willing to help you find counsel as well.

Additionally, the laws and regulations relating to Cuba travel change with the political winds, sometimes to become more restrictive, sometimes less. For example, in June 2004 the Bush administration sharply curtailed the availability of several types of licenses permitting travel to Cuba. These changes include limiting the rights of Cuban-Americans to visit family, removing the “fully-hosted travel” exemption, and restricting educational travel. In February 2009, the Obama administration announced its intention to reverse some of the 2004 restrictions, including those pertaining to family travel, but left other aspects of the travel ban unchanged. You can find more information on the current licensing regulations in Section III. Considering that the laws and regulations may continue to change, it is essential that you contact an attorney to review the regulations and the facts of your individual case prior to any trip.

II. What is prohibited? Who is subject to the prohibitions? What are the violations?

The Office of Foreign Assets Control (OFAC), a division of the U.S. Department of the Treasury, enforces the Cuba embargo, including its restrictions on travel. The embargo rules are called the Cuban Assets Control Regulations and are issued under the authority of the Trading With the Enemy Act.

A. Prohibition on transactions

The regulations do not directly prohibit travel to Cuba. An earlier, 1963 version of the law created an outright ban on travel, but was found by the U.S. Supreme Court to violate the Constitution. The current regulations do prohibit transactions with Cuban nationals in some circumstances. The general rule is that you may not spend any money that ends up in Cuban hands, unless you qualify for one of the limited exceptions to the ban. This includes payment for food, for lodging, for transportation to and in Cuba—any and all expenditures, whether in dollars or in another currency. **It also includes money spent in the U.S. or in another country (not just money spent in Cuba) if that money will end up in the hands of a Cuban national.** For example, buying a tour package through a Canadian travel agency (which then pays for your airline tickets, your hotel, and all expenses on the ground with Canadian currency) is considered an indirect transaction with Cuban nationals and prohibited by the regulations. Even purchasing a ticket on a non-Cuban airline is considered a transaction with Cuba because the airlines use the proceeds to pay airport fees in Cuba. Most transactions or exchanges involving goods and services are also prohibited.

B. Who is subject to the prohibitions

The Cuba travel embargo applies to anyone subject to U.S. jurisdiction (31 C.F.R. § 515.329). Basically, this means that the embargo applies to (a) anyone who is physically in the United States, including green card and visa holders; (b) U.S. citizens or residents who are outside the U.S.; and (c) individuals who have dual (U.S.) citizenship or maintain passports in addition to their U.S. passport.

C. Types of violations

It is important to note that there are two forms of penalties for violations – criminal and civil. Most travelers who are alleged to have violated the travel embargo are charged with civil violations. This is discussed in more detail in part 5 of this booklet. **Criminal charges can be pursued in certain situations, however.** If OFAC believes that there is evidence that “...suggests willful violations of substantive prohibitions or requirements, OFAC may refer those

cases to other federal law enforcement agencies for criminal investigation” (31 C.F.R. Part 501 C). In practice, this rarely happens. We generally see criminal charges for violations of the regulations in a few types of cases: those involving large-scale commercial transactions (e.g., importation of more than 500 cigars in one’s luggage) or where a person allegedly arranged travel or other related events (e.g., organizing boat races to Cuba) for others without a special “travel service provider” license allowing them to do so. However, there is no guarantee that the government will continue this policy of enforcing the travel restrictions mainly through civil penalties.

There are also special concerns for people who sail or otherwise take a vessel to Cuba, as these activities are subject to Coast Guard and Commerce Department regulations, which are outside the scope of this booklet. Again, you should contact an attorney to discuss whether these provisions apply to your situation.

OFAC has published guidelines setting forth proposed civil penalties for violations of the travel restrictions. The standard proposed penalty for a first-offense violation involving tourist travel is \$7,500. (31 C.F.R. Part 515 Appx.)

III. The Exceptions to the Travel Ban

OFAC allows certain types of travel-related transactions to take place under licenses. There are two types of licenses: general licenses and specific licenses. A general license allows persons meeting certain narrow criteria, whose travel is for certain narrow purposes, to travel without advance written approval of OFAC. A specific license allows individuals to travel after they (or an organization sponsoring their travel) have made a written application in advance of the trip to OFAC, and received written approval from OFAC in response.

A. General Licenses

The first category of exceptions to the ban is the “**general license.**” Travel (or rather, engaging in transactions related to travel) under a general license requires no application or advance permission from OFAC. Travel by the following types of persons for the following purposes is permitted under general license:

1. U.S. and foreign government officials and representatives of international organizations of which the U.S. is a member, traveling on official business;
2. regularly employed journalists and supporting personnel;

3. full-time professionals engaged in a full work schedule of noncommercial, academic research that has a substantial likelihood of public dissemination;
4. full-time professionals engaged in meetings organized by international professional organizations, institutions or associations that are not headquartered in the U.S. and that regularly sponsor meetings or conferences in other countries;
5. persons (and travel companions who share a common dwelling as a family) visiting a Cuban national living in Cuba, to whom they are related by blood, adoption, or marriage and with whom they are no more than three generations; and
6. individuals regularly employed by a producer or distributor of agricultural or medical items (or its appointed representatives) whose travel relates to the commercial marketing, sales negotiations, accompanied delivery or servicing of agricultural commodities, medicine or medical devices that have been approved for export/re-export by the Department of Commerce. Regulations require that persons traveling under this license category file a report with OFAC within two weeks in advance of their departure for Cuba and another report within two weeks of their return.

You should consult the regulations directly with the help of an attorney to confirm that you qualify for a general license.

You can find a link to the regulations and the September 2009 Amendments located on our website at <http://www.ccrjustice.org/learn-more/reports/publication%3A-travel-restrictions-cuba> or at OFAC's website <http://www.treas.gov/offices/enforcement/ofac/programs/cuba/cuba.shtml>.

WARNING: In some respects, it is riskier to use a general license than a specific license. If in doubt, it may be wise to ask OFAC for a specific license (or whether you qualify for a general license). If you ask for a specific license but OFAC believes you qualify for a general license, OFAC will inform you of this in their response. Either way, you should consult an attorney and review the regulations before you leave (rather than after).

B. Specific Licenses

The second category of exceptions to the ban, called “**specific license**,” requires an application and **written permission in advance of travel** from OFAC. Specific licenses can be issued to an individual or an organization, as explained below.

1. Specific Licenses for Educational Institutions and Religious Organizations

The first type of specific license is available only to accredited educational institutions and religious organizations and is good for up to two years. It authorizes travel-related expenditures for multiple trips, by anyone affiliated with the institution who meets OFAC requirements relating to the purposes of the organization and the trip. It is important to make sure that you fit the requirements stated in the organization's license.

2. Specific Licenses for Individuals

Specific licenses are also available to individuals on a case-by-case basis. Specific licenses may be available authorizing travel for the following purposes:

- a. freelance journalism (31 C.F.R. § 515.563);
- b. professional research or meetings that do not meet all the criteria for a general license (31 C.F.R. § 515.564);
- c. educational activities (not connected with an academic institution holding a specific license) (31 C.F.R. § 515.565). This license was restricted as of July 2004 to only authorize programs that last at least 10 weeks in Cuba. Although an entire subcategory of licenses once existed for "people to people" educational exchanges, this was eliminated in March 2003;
- d. religious activities not connected with a religious organization holding a specific license (31 C.F.R. § 515.566);
- e. public performances, athletic and other competitions or exhibitions (31 C.F.R. § 515.567);
- f. the activities of private foundations or research/educational institutions (31 C.F.R. § 515.576);
- g. support for the Cuban people (31 C.F.R. § 515.574), including investigations by human rights organizations (§ 515.574(a)(1));
- h. humanitarian projects (31 C.F.R. § 515.575);

- i. the import/export of information or informational materials (31 C.F.R. § 515.545(c)); and
- j. the export of authorized products (31 C.F.R. § 515.533 & 515.559).

All specific licenses are available on a per-trip basis. In addition, those in categories b, c, d, f, h, i and j, above may also be granted for multiple trips over an extended period. To get a specific license, you should file an application with OFAC at least 3 months before the trip, if possible. You should first consult the regulations directly, so that your application can address all the requirements in the category (or categories) of specific license(s) for which you want to apply. OFAC will then either grant or deny your application, although they have also been known simply not to respond in time if at all. You should review the regulations with the help of an attorney to determine whether you might qualify for any given specific license and what information you need to include in your application.

Applications for a **specific license** may be submitted on-line through the following website: <https://cubatransport.ofac.treas.gov/> or by letter to:

Licensing Division
Office of Foreign Assets Control
U.S. Department of the Treasury
1500 Pennsylvania Ave., N.W.
Washington, D.C. 20220

We suggest that you apply several months in advance of your trip, and that you get advice from a licensed travel service provider on what information your letter should include. Call OFAC at (786) 845-2828 or visit their web-site for a list of licensed travel service providers (see http://www.treas.gov/offices/enforcement/ofac/programs/cuba/cuba_tsp.pdf). Remember that travelers with a **general license** (see above) need not apply in advance for permission.

C. What Licensed Travelers May Spend and Bring Back

As of September 2009, anyone who travels under either a “general license” or a “specific license” may spend up to \$179 per day for hotel, meals, local transportation and goods used in Cuba, plus additional amounts directly related to their licensed activities. (To confirm whether OFAC has changed this per diem expense amount, go to <http://aoprals.state.gov> .) Licensed (and unlicensed) travelers are prohibited from bringing back items purchased in Cuba, such as cigars

or rum. However, there is no limit on the purchase and import of **informational materials**, including written materials, audio and video tapes (not blank ones), CDs and records, photographs, paintings and other works of art.

Those traveling under the general license for “family travel” (Section III A (5) above) are allowed to carry up to \$3,000 in remittances during one trip. However, there are no limitations on number or amount of remittances, provided that the recipients are not currently prohibited members of the Cuban Communist Party or the Government of Cuba.

You can never use a charge card of any kind (including both credit and debit cards) in Cuba (31 C.F.R. § 515.560(e)(1)) even with a license. There is also a baggage limit imposed by OFAC of 44 lbs (31 C.F.R. § 515.560(f)).

D. “Fully Hosted” Travel

In previous years, the travel restrictions included an exception for “fully hosted travel.” This authorized travel as long as all of your travel expenses were paid by a person who is “not subject to the jurisdiction of the United States” and that person did not receive anything in return for these expenses. As of July 2004, however, this exception has been rescinded. OFAC claims that receiving any goods or services, regardless whether you paid for them, constitutes a transaction in which a national of Cuba has an interest and, as a consequence, is banned. While we have doubts about OFAC’s power to regulate such transactions, no court has ruled on this issue yet. In any event, OFAC contends that flying in to Cuba, even on a non-Cuban airline, is a prohibited transaction because part of the price of any ticket goes to pay airport landing fees. (Sailing your own vessel to Cuba is also problematic because it requires Coast Guard and Commerce Department licenses. (Relevant Coast Guard provisions are at 50 U.S.C. § 191 and 33 C.F.R. § 107.215, while applicable Commerce Department regulations are at 15 C.F.R. Part 746 and 15 C.F.R. 740.15).

IV. Before and During Your Re-entry

Customs officials are legally authorized to question and search travelers prior to departure from the U.S. **If you are questioned, do not volunteer any information and, above all, do not lie.** Should officials try to seize anything of yours at this point, you should object strenuously, demand a receipt that fully describes the item seized, and contact legal counsel as soon as possible.

You are now on your way to Cuba, having fallen into one of three possible classes of travelers:

1. under a general license (legal);
2. under a specific license (legal); or
3. without any license (illegal).

Although you have not yet even arrived in Cuba, it is already time to focus on your return and re-entry meeting with U.S. customs and immigration agents. Whether or not you are traveling legally, you may be questioned, searched, harassed, temporarily detained (possibly missing a connecting flight), or threatened, but you will almost certainly be let go, unless you are suspected of a crime other than an embargo violation. Your legally (or illegally) obtained goods or materials may or may not be seized from you. Or you may simply be told "Welcome to the United States and have a nice day."

It is not the intent of this material to help anyone break the law. The law requires that you be honest when you are required to provide information, but also allows you to assert your right not to provide information when you can. You should consult an attorney in advance of traveling to decide what questions you should answer and what questions you should refuse to answer. In light of your rights and obligations, there are specific things you should know in anticipation of re-entry. They are:

1. Cuban officials sometimes do not stamp passports upon entry to and departure from Cuba, but if they do, it may be with a small symbol, that looks like a half-inch wide purple square that can easily escape your notice, but is well known to U.S. customs agents. Cuban officials have a tendency to stamp passports on page 16. U.S. officials may note that you have been to Cuba either from your passport, or from your customs and immigration re-entry form (see below), or from tickets, receipts or other documents in your possession, or from the clothing you are wearing or have in your luggage, or from the fact that you have come back from Canada with a radiant tan.

2. All disembarking passengers are required to complete a Customs Declaration that asks you to disclose all countries that you have visited. You should be aware that it is a federal crime (under 18 U.S.C. § 1001) to make a false or fraudulent statement to a government agent. You should also be aware that individuals traveling under a general license have encountered difficulty when they stated on the form that the purpose of their trip was "pleasure" rather than "business."

3. Customs officials are permitted to search you and everything you bring back with you, and have been known to seize goods, receipts, plane tickets, airport departure tax slips, etc.—documents that may be evidence that you engaged in prohibited transactions. In certain circumstances goods you have with you may be seized. Such goods or receipts may be used as evidence of an embargo violation, if you are not licensed. **You can object strenuously but politely to any seizure of goods or documents. You may also wish to demand the right to call an attorney, and to insist on a receipt for all goods seized and on photocopies of any seized documents.** Keep in mind that although you may purchase and import unlimited quantities of informational materials, they may be wrongfully seized by an overzealous agent.

4. Some travelers routinely bring a copy of the applicable regulations to show the customs agent. This can cut both ways, depending on whether it helps or hurts in your particular case for the agent to know the rules. You can get copies of the regulations by calling the federal Government Printing Office at (202) 512-1530 for disc or paper copies; at (202) 622-0077 to request copies by fax. You can also access the regulations online through OFAC's website at: <http://www.treas.gov/offices/enforcement/ofac/programs/cuba/cuba.shtml>. You may also want to have a printout of this pamphlet handy.

5. If you have a specific license, you may be required by the terms of the license to carry it and to show it to the Customs official; consult with an attorney to find out whether this is the case. If you are traveling under a general license, you may want to carry your journalist, faculty or other credentials, and show them to the Customs agent; again, you should consult with an attorney in advance of travel as to whether this makes sense based on your individual facts, and to decide how much to say to the Customs agent about the circumstances of your travel.

6. **Before you travel, you should consult with an attorney regarding what to disclose on the customs and immigration form or any other forms you are asked to fill out, what you may wish to say or show to prove that you have a license, which routine questions to answer, and which questions you can or should refuse to answer if asked.** While being questioned, try to be patient and keep your cool under what may be intimidating conditions. You generally have a right to remain silent, and to be present during questioning of a minor for whom you are taking parental responsibility. Asserting your rights may cause temporary discomfort and inconvenience, but waiving them may provide the government with evidence to find you in violation of the embargo, which may ultimately cost much more in time, hassle, and money. Again, you should consult with an attorney in advance of travel as to whether it makes sense for you to assert Fifth Amendment privilege in response to certain questions. If you are asked to submit to a search of more than your luggage and emptying of pockets, you may wish to object and ask to call your attorney.

7. Write down the names, titles, and badge numbers of all officials with whom you have contact.

V. Re-entry Customs Interview

Authorities are entitled to ask the questions listed below, to search your luggage and your person, and to seize contraband. If you are subjected to a body search (other than the content of your pockets), or if agents seek to seize anything from you, you may politely but firmly object and ask to speak to your lawyer. You may also demand a list of anything seized and can refuse to sign any form that gives agents your permission to take the items.

The standard questions by customs inspectors are:

- What is your name?
- What is your address?
- What is your occupation?
- Was the purpose of your trip business or pleasure?
- Which countries have you been to, and for how long?
- How much currency are you carrying?
- Do you have anything to declare?
- What do you have in your luggage and on your person?

VI. After Your Return

You have successfully navigated the re-entry process. As the pleasant memories of your trip begin to fade, you might receive a letter from OFAC, entitled “Requirement to Furnish Information” or “Administrative Subpoena” suggesting that you have violated the embargo, and that you are “required” to answer certain questions within a short period of time (usually 20 business days). Individuals generally have a right to refuse to answer these questions by asserting Fifth Amendment privilege. **At this point, you should consult an attorney who knows the Cuba travel regulations and is familiar with OFAC procedures. Because of the short deadlines for response, you should contact an attorney immediately upon receiving any notices from OFAC.**

Many individuals in previous years have received an “Offer of Expedited Penalty Settlement” offering to resolve the matter without further proceedings in exchange for a payment to OFAC. Such letters have sometimes preceded even the “Requirement to Furnish Information”/“Administrative Subpoena” which formerly was almost always the first notice a

returning traveler received. **You should consult an attorney if you receive such a letter.**

One of two things will happen next. You may never hear from OFAC again. (This probably means they did not have tangible evidence of an embargo violation and were hoping you would provide it to them by answering their questions.) Otherwise, you (or your attorney) will get a second letter, a “Pre-Penalty Notice,” from OFAC. **You should consult with an attorney before responding to the Pre-Penalty Notice.** After responding to the Pre-Penalty Notice, you or your attorney may receive a “Penalty Notice.” **It is extremely important that you respond to the Penalty Notice in the time frame allowed and with the right language.** Otherwise, you may forfeit your right to contest the charges and also lose any leverage you have to negotiate a favorable settlement. Do not be nervous about these threatening letters, but do consult with counsel. An attorney is almost indispensable at this point and beyond.

Many individuals change addresses between their return to the United States and the time OFAC sends out the above notices (which can often happen months or years after the date of travel). OFAC generally will send all notices to the last address they have on file for you. If you have moved, they will generally not bother to track you down, and if you do not pick up a certified letter, they will not always make further attempts to get the letter to you; rather, they generally will simply claim that you have forfeited any rights to a hearing and other procedural protections because you did not respond to the notices you never received. **If you do change addresses following a trip to Cuba, consult an attorney about what steps you might want to take to deal with these potential problems.**

IMPORTANT NOTICE

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