

# Trump Administration Partially Lifts Suspension of Private Right of Action Under Title III of the Helms-Burton Act

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International Arbitration

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On March 4, 2019, the Trump administration announced that it would allow some lawsuits to proceed against traffickers in property confiscated by the Cuban government. This decision, made pursuant to Title III of the Helms-Burton Act, was a sharp departure from the practice of previous presidential administrations. This Client Alert will provide background information on Title III, explain the administration's recent decision, and offer insights on the implications for both potential claimants and companies doing business in Cuba.

## Title III of the Helms-Burton Act

The Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996, 22 U.S.C. § 6021 et seq., commonly known as the Helms-Burton Act, was enacted in 1996. Title III of the Act, at § 302, provides a private right of action against any person who “traffics in property which was confiscated by the Cuban Government on or after January 1, 1959.” “[A]ny United States national who owns the claim to such property” may bring an action under Title III. The Act defines both “trafficking” and “property” in broad terms, though real property used for residential purposes is generally excluded except for limited situations.

Pursuant to § 306 of the Act, the private right of action may be suspended for periods of up to six months at a time, upon a determination that “that the suspension is necessary to the national interests of the United States and will expedite a transition to democracy in Cuba.” Presidential administrations have consistently suspended the private right of action, through consecutive six-month suspensions, since Title III came into effect on August 1, 1996.

## Recent Suspensions of Title III

On January 16, 2019, Secretary of State Mike Pompeo announced a suspension of the right to bring an action under Title III for only 45 days, rather than the typical six-month period. This announcement is available [here](#).

More recently, on March 4, 2019, Secretary Pompeo provided that the administration was suspending the right to bring an action for an additional 30 days, from March 19 through April 17, 2019. He also announced that the 30-day suspension will not apply to actions brought against “a Cuban entity or sub-entity identified by name on the State Department’s List of Restricted Entities and Sub-entities Associated with Cuba.” That list, commonly known as the Cuba Restricted List, is available [here](#). Accordingly, beginning on March 19, 2019, U.S.

nationals may file lawsuits pursuant to Title III against entities included on the Cuba Restricted List. The March 4, 2019 announcement is available [here](#).

### **Implications of the Partial Suspension**

The practical implications of the March 4, 2019 partial suspension are likely to be limited. The decision does not allow actions to proceed against all potential traffickers in property confiscated by the Cuban government. Instead, only suits against a relatively small number of entities — those listed in the Cuba Restricted List — may be commenced. The administration has been clear that actions against third parties in joint ventures with those Cuban entities are not permissible under the partial lifting of the suspension.

Because U.S. persons are generally prohibited from engaging in direct financial transactions with the entities on the Cuba Restricted List, potential claimants may have difficulty establishing personal jurisdiction in U.S. courts over entities in the list. Further, even if the jurisdictional hurdle can be overcome, claimants that ultimately succeed in establishing liability may face further difficulties in collecting on judgments, as these entities likely do not maintain assets in the United States.

Nevertheless, the administration's recent trajectory indicates a willingness to explore further expansions of the ability to file suit under Title III. If the administration were to allow the private right of action under Title III to become fully effective, companies with claims for confiscated property might be able to seek compensation for their losses, and companies operating in Cuba — or those partnering with companies operating in Cuba — may be at risk of litigation related to property associated with those business ventures. As noted above, the current suspension expires on April 17, 2019. Pursuant to the Act's notice requirements, the administration must notify Congress of its intent to renew the suspension by April 3, 2019. Both potential claimants and companies with interests in Cuba should be aware that the administration may announce additional modifications to the ability to bring suit under Title III on or around this date.

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