

Trump Administration Completely Lifts Suspension of Private Right of Action under Title III of the Helms-Burton Act

April 19, 2019

On April 17, 2019, the Trump Administration announced that it would allow lawsuits to proceed against traffickers in property confiscated by the Cuban government. This decision, made pursuant to Title III of the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996, or Helms-Burton Act (22 U.S.C. §§ 6082-6085), marks a sharp departure from the practice of previous administrations, which had repeatedly suspended the right to sue under Title III for more than 20 years. This Client Alert updates the [alert](#) we issued on March 5, 2019, and provides background information on Title III, explains the administration's recent decision, and offers insights on the implications for both potential Title III plaintiffs and defendants.

Title III of the Helms-Burton Act

- ***What it does:*** Title III of the Helms-Burton Act creates a federal cause of action for money damages arising from “trafficking” in Cuban property confiscated after the Cuban Revolution.
- ***Who is potentially liable:*** “[A]ny person that . . . traffics in property which was confiscated by the Cuban Government on or after January 1, 1959, shall be liable” to pay “money damages,” court costs, and “reasonable attorney’s fees.” Damages may be trebled if the person that “traffics” the property is deemed to have been on notice that a U.S. national held a claim to the confiscated property, as specified in the statute. “Traffics” is defined broadly to include the knowing and intentional use, possession, or control of confiscated property, and benefiting or profiting from such property, among other things. “Property” is also defined broadly, but excludes “real property used for residential purposes,” except for property for which claims have been certified under Title V of the International Claims Settlement Act or property occupied by Cuban government officials.
- ***Who may sue:*** A U.S. national who owns a claim to confiscated property in Cuba may bring an action under Title III, so long as the amount in controversy exceeds \$50,000 (exclusive of interest, costs, and attorneys’ fees). U.S. nationals who acquired the claim after March 12, 1996 with respect to property confiscated before that date may not sue under Title III. Additionally, U.S. nationals who were eligible to file a claim for the confiscated property with the Foreign Claims Settlement Commission (FCSC) — a U.S. government agency empowered to assess and certify claims by U.S. nationals for confiscated property in Cuba — but did not do so may not sue under Title III.
- ***Suspension of the right to sue:*** The Helms-Burton Act expressly allows the President to suspend the right to sue under Title III for periods of no more than six months at a time, upon a determination “that the suspension is necessary to the national interests of the United States and will expedite a transition to democracy in Cuba.” Pursuant to this provision, previous administrations have consistently suspended the right to sue under Title III, through consecutive six-month suspensions, since it came into effect on August 1, 1996. Until now.

The Suspension of Title III Is Lifted

On April 17, 2019, Secretary of State Mike Pompeo announced that, effective May 2, 2019, “the right to bring an action under Title III of the [Helms-Burton] Act will be implemented in full.” His announcement is available [here](#).

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This action follows a gradual loosening of the suspension of the Title III right to sue since January 2019. That month, Secretary Pompeo had announced that this right would be suspended for 45 days, instead of the typical six-month period applied previously. On March 4, 2019, Secretary Pompeo announced a further suspension of 30 days (through April 17) but also announced the lifting of the suspension with respect to suits 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 have been able to sue entities on the Cuban Restricted List pursuant to Title III. The implications of this move were limited, however, given the relatively small number of entities included on that List and the potential difficulties establishing personal jurisdiction in U.S. courts over those entities.

Implications of the Complete Lifting of the Suspension of Title III

The government’s latest action opens the door to U.S. lawsuits against all “traffickers” in property confiscated by the Cuban government, not just a restricted group of such “traffickers.”

Starting on May 2, 2019, U.S. holders of claims to confiscated Cuban property may seek money damages in U.S. court from companies or individuals who knowingly and intentionally engage in the broad array of acts that constitute “trafficking” under the statute. Given the passage of time since the confiscation, potential Title III plaintiffs may need to assess the status of their claim to confiscated Cuban property (e.g., who owns the claim; when was the claim acquired; was it certified by the FCSC; was it eligible for submission to the FCSC but was not submitted or certified). Potential Title III plaintiffs may also need to investigate who is engaging in activities that qualify as “trafficking” with respect to the confiscated property at issue and whether a U.S. court has personal jurisdiction over these potential defendants. The window for filing these suits may close. They are subject to a statute of limitations of two years from the time the relevant “trafficking” ceased, and a future administration may again suspend the right to sue under Title III, though such a suspension would not affect pending suits commenced beforehand.

A number of multinational companies in diverse sectors which have engaged in transactions in Cuba now face potential U.S. litigation exposure. Several of these companies are based in Europe, Canada, China and other non-U.S. countries. Some of those countries have strongly criticized the activation of Title III for the litigation exposure it creates for these companies. Potential Title III defendants may want to assess their exposure and take measures to minimize it.

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