IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA

Case No. 19-cv-22619-RNS

MARIO DEL VALLE, ENRIQUE FALLA,
ANGELO POU, as individuals and
on behalf of all others similarly situated,

Plaintiffs,

v.

EXPEDIA GROUP, INC., HOTELS.COM
L.P., HOTELS.COM GP, ORBITZ, LLC,
BOOKING.COM B.V., BOOKING
HOLDINGS INC.,

Defendants.
_____/

PLAINTIFFS' OMNIBUS[1] OPPOSITION TO DEFENDANTS' MOTION TO DISMISS

[1] Notwithstanding the fact that the defendants filed two separate, 20-page motions, to preserve party and judicial time and resources during this unprecedented time, plaintiffs address both motions together in this omnibus response.

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OTHER AUTHORITIES

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Booking.com (U.S.A.) Inc. Registration, Florida Department of State, Division of Corporations (last visited Mar. 5, 2020) 8

Brian Bandell, *Inside Look: Expedia opens office on Brickell for nearly 100 employee, South Florida Business Journal* (Jan. 12, 2016) 9

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INTRODUCTION

In separate Motions to Dismiss, defendants Booking Holdings Inc. and Booking.com B.V. (the "Booking Entities"[2]), and Expedia Group, Inc., Hotels.com L.P., Hotels.com GP, LLC, and Orbitz, LLC (the "Expedia Entities"[3]), make two critical admissions. ***First***, they admit that plaintiffs' homes on Varadero Beach and Arroyo Bermejo Beach, Cuba (the "Properties") were confiscated by the Cuban government, and they were aware of this fact while they trafficked, and benefitted from others' trafficking, in the Properties. *See* Expedia MTD at 11 (The Cuban government's "confiscation may constitute a concrete and particularized injury to individuals from whom the property was taken."); Booking MTD at 13 (The Cuban government's "confiscation might constitute concrete and particularized injury to the owners of the property at the time it was confiscated.").[4] ***Second,*** defendants admit that they trafficked in the Starfish Cuatro Palmas and Memories Jibacoa (the "Resorts"), which were built on the sites of the Properties.[5] Expedia MTD at 1 ("Decades after the Cuban government allegedly confiscated the Properties, certain subsidiaries of Defendant Expedia Group, Inc. . . . began to offer travelers the ability to secure reservations at the Resorts through web-based systems . . . ."); Booking MTD at 1 ("Decades after the Cuban government allegedly confiscated the property at issue, defendant Booking.com B.V. . . . began to offer travelers the ability to secure reservations at hotels anywhere in the world—including at the Subject Hotels—through its web-based system.").

Nonetheless, defendants argue that plaintiffs lack "constitutional standing" to bring their claims because there is no causal connection between plaintiffs' injuries and defendants' trafficking. *See* Expedia MTD at 11-12; Booking MTD at 13-14. This is a rank mischaracterization of Title III of the Helms-Burton Act, 22 U.S.C. § 6021, *et. seq.* ("Title III" of "the Act"), not to mention Article III of the U.S. Constitution. The express language of Title III

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[2] The Booking Entities' Motion to Dismiss (D.E. 52) will be referred to as the "Booking Motion" or the "Booking MTD."

[3] The Expedia Entities' Motion to Dismiss (D.E. 53) will be referred to as the "Expedia Motion" or the "Expedia MTD."

[4] Defendants' theory of a non-existent "bad acts" state of mind is baseless. Defendants cannot pretend they didn't know they were booking rooms in hotels built on stolen property, and that is all the law requires. Plaintiffs' pre-suit notice, attached as **Composite Exhibit A**, expressly reminded them of this fact.

[5] The statutory definition of "trafficking" in this case expressly includes "engag[ing] in a commercial activity ***using or otherwise benefiting*** from confiscated property." 22 U.S.C. § 6023(13)(A)(ii) (emphasis added). Running a business that books rooms in hotels built on confiscated property amounts to "benefitting from confiscated property" as a matter of law.

and the operative complaint make clear that plaintiffs' injury in this case is not the Cuban government's theft of their Properties. Plaintiffs' injury—indeed the sole focus of Title III and this case—is defendants' trafficking, and benefitting from others' trafficking, in the Properties, ***which these defendants have admitted***.

Hedging their longshot bets on an ill-conceived "constitutional standing" argument, defendants alternatively argue that: (1) this Court may not exercise personal jurisdiction over them despite the fact that they or their agents are registered to do business in Florida, and do business in Florida every day of the year, including actively marketing the Resorts to Florida residents and offering them an interactive website through which they can reserve and pay for rooms at the Resorts; (2) plaintiffs' Properties are not "property" as defined in Title III and plaintiffs have not adequately alleged that their parents owned, and plaintiffs now own, claims to the Properties; (3) Title III's "residential purpose" carveout for ***current*** *residential properties* somehow should apply because plaintiffs and their families lived on the Properties until the Cuban government stole them ***decades ago***; (4) plaintiffs did not acquire their claims to the Properties before March 12, 1996, despite the fact that Title III's definition of "property" includes future or contingent interests in real property; and (5) defendants' trafficking (and benefitting from others' trafficking) isn't actionable, on the theory that it is "incident to lawful travel," despite the plain meaning of the statutory language, the fact that every court to address the issue has held that it is an affirmative defense which a defendant must plead and prove, and, the obvious, necessary conclusion that it is a factual issue that cannot be resolved on a motion to dismiss.

As we more fully demonstrate below, plaintiffs' complaint is legally sufficient, and the Motions should be denied.

LEGAL STANDARD

"In general, courts disfavor motions to dismiss and grant such motions in rare circumstances." *Wright v. King*, 2007 WL 80844, at *1 (M.D. Fla. 2007) (citing *Gasper v. La. Stadium and Expo. Dist.*, 577 F.2d 897, 900 (5th Cir. 1978)). Rule 8(a) of the Federal Rules of Civil Procedure requires a complaint to contain (1) a "short and plain statement of the grounds for the court's jurisdiction . . . ," (2) "a short and plain statement of the claim showing that the pleader is entitled to relief," and (3) a demand for the relief sought . . . ." Fed. R. Civ. P. 8(a). To withstand a motion to dismiss under Fed. R. Civ. P. 12(b)(6), a complaint must allege "enough facts to state a claim to relief that is plausible on its face," so as to "nudge[] [its] claims across

the line from conceivable to plausible." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). Although "a formulaic recitation of the elements of a cause of action will not do," *Twombly*, 550 U.S. at 555, "[t]o survive a 12(b)(6) motion to dismiss, the complaint does not need detailed factual allegations, but must give the defendant ***fair notice of what the plaintiff's claim is and the grounds upon which it rests***." *Randall v. Scott*, 610 F.3d 701, 705 (11th Cir. 2010) (citing *Twombly*, 550 U.S. at 555; *Conley v. Gibson*, 355 U.S. 41, 47 (1957) (internal quotations omitted) (emphasis added)).

Further, "[i]n deciding a Rule 12(b)(6) motion to dismiss, the court must accept all factual allegations in a complaint as true and take them in the light most favorable to plaintiff . . . ." *Dusek v. JPMorgan Chase & Co.*, 832 F.3d 1243, 1246 (11th Cir. 2016) (citing *Erikson v. Pardus*, 551 U.S. 89, 94 (2007)). Finally, a court may not resolve factual issues on a motion to dismiss, but may decide only questions of law. *Wright*, 2007 WL 80844, at *1 (citing *Kest v. Nathanson*, 216 So. 2d 233, 235 (Fla. 4th DCA 1968)). "In ruling on a motion to dismiss, the Court is constrained to review the allegations as contained within the four corners of the complaint and may not consider matters outside the pleading without converting the defendant's motion into one for summary judgment." *Crowell v. Morgan, Stanley, Dean Witter Servs. Co., Inc.*, 87 F. Supp. 2d 1287, 1290 (S.D. Fla. 2000).

DEFENDANTS' MOTIONS SHOULD BE DENIED

Title III provides that "any person that . . . traffics in property which was confiscated by the Cuban Government on or after January 1, 1959, shall be liable to any United States national who owns a claim to such property for money damages . . . ." 28 U.S.C. § 6082(a)(1)(A). Consequently, Plaintiffs alleged that (1) they are United States nationals (2) who own claims to property that was (3) confiscated by the Cuban government on or after January 1, 1959, and (4) trafficked by the defendants within the last two years. Plaintiffs adequately alleged each of these elements. *See* Second Amended Class Action Complaint ("Am. Comp." or "complaint") [D.E. 50] at 2; ¶¶ 2-4, 13-15, 19-46, 85-90. Nonetheless, defendants demand that this case be dismissed, arguing that: (1) they are not subject to personal jurisdiction; (2) plaintiffs did not adequately allege that their parents owned, and they now own, claims to the Properties, which (3) purportedly are not "property" under Title III; (4) plaintiffs purportedly did not acquire their claims to the Properties before March 12, 1996; (5) plaintiffs did not sufficiently allege that

defendants' trafficking was "knowing and intentional";[6] and (6) defendants' trafficking is "incident to lawful travel." Plaintiffs address each argument in turn.

I. Even If "Constitutional Standing" Were Not a Canard, Plaintiffs Would Have it, and They Plainly Have Standing to Bring this Case Under Title III of the Act

Defendants argue that plaintiffs lack "Article III standing" to bring this action.[7] MTD at 1, 10-11. This theory demonstrates either (1) a fundamental misunderstanding of Article III, (2) a fundamental misunderstanding of Title III, or (3) a transparent strawman argument.

Under Title III, plaintiffs' injury is not the Cuban government's confiscation of the Property. Plaintiffs' injury—indeed the sole focus of Title III—is defendants' ***trafficking*** in the Properties. Defendants nonetheless double down on their misreading of the Act with the strawman argument that:

> Here, Plaintiffs' claims stem from the Cuban government's alleged confiscation of the Properties . . . [and] Plaintiffs fail to allege any 'causal connection' between the Expedia Entities' challenged conduct—i.e., 'offering, for economic benefit, reservations at the Resorts'—and the alleged confiscation of the Properties. And for good reason: the Expedia Entities 'played no role' in bringing about Plaintiffs' alleged injury.

Expedia MTD at 11-12 (quoting the complaint). *See also* Booking MTD at 13-14 (same). Plaintiffs' complaint did not allege these non-elements of their claims because they don't exist. The complaint's "alleged injury" plainly is not the Castro regime's confiscation of the Properties, but Defendants' trafficking in the Properties. *A fortiori*, even if Title III required alleging some

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[6] We pause to note one of defendants' fantasies about the Act, that a Title III claim requires some sort of bad intent akin to an intentional tort. This is frivolous. Title III is a strict liability statute with limited, enumerated, statutory defenses. To adequately allege that a trafficker acted "knowingly and intentionally" merely requires alleging volitional, not accidental or unintended, trafficking. The latter is conceivable, for example, if a business bought and resold vinegar without knowing it was made in Cuba, where the communist Castro regime confiscated the real property on which the factory stood. This Court may (and should) take judicial notice of the fact that the Castro regime confiscated all real property, including plaintiffs' Properties. A defendant booking rooms in a hotel built on those Properties in Cuba may not plausibly claim it didn't know that the hotel stands on confiscated property. This is all the Act requires.

[7] The Court should reject defendants' attempt to use "standing" as a bootstrap to magically transform a Rule 12(b)(6) motion into an attack on subject matter jurisdiction. Article III says nothing about "standing." Its "case and controversy" requirement gave rise to judge-made justiciability rules including standing, ripeness and mootness. None of them have anything to do with jurisdiction in a federal question case. Only in a diversity case does jurisdiction relate to standing, because diversity of citizenship must exist when the case is filed.

"causal connection" between trafficking and something else (it doesn't), it wouldn't be confiscation of the Properties.

As a general matter, standing requires that a "plaintiff must have (1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision." *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1547 (2016) (citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992)). Defendants argue that the complaint fails to satisfy the first and second elements of this test.[8] Expedia MTD at 11; Booking MTD at 13. To do so, defendants disingenuously mischaracterize plaintiffs' claims as if they were based on the Cuban government's confiscation of the Properties, and not defendants' trafficking in the Properties, which is plainly and expressly what the Act targets.

Defendants cannot seriously dispute that plaintiffs adequately alleged "an invasion of a legally protected interest." Title III expressly makes trafficking in confiscated property a "legally-protected interest" for which it expressly provides a remedy: "[t]o deter trafficking in wrongfully confiscated property, United States nationals who were the victims of these confiscations should be endowed with a judicial remedy in the courts of the United States that would deny traffickers any profits from economically exploiting Castro's wrongful seizures." 22 U.S.C. § 6081(11). The express language of Title III cannot support defendants' frivolous argument that plaintiffs' injuries are not defendants' admitted trafficking, but rather the Cuban government's confiscation of the Properties, for which plaintiffs do not—and cannot—seek redress under Title III. That said, we respond as follows:

First, what plaintiffs actually alleged is that defendants are liable for their trafficking in the Properties. Am. Comp. at 3 ("Together, the Cuban government, Blue Diamond, the Expedia Entities, and the Booking.com Entities have exploited and benefitted from the Del Valle, Falla, and Muniz families' properties without paying the rightful owners any compensation whatever. The Plaintiff Heirs now sue to right the defendants' unlawful trafficking in their property and for just compensation for themselves and persons who are in a similar situation."); *id*. ¶ 43 ("The Plaintiff Heirs never have given permission to defendants or anyone else to traffic in their Properties, and the defendants never have paid—nor have the Plaintiff Heirs ever received—any compensation for defendants' trafficking in the Properties."); *id*. ¶ 88 ("Defendants Expedia and

[8] There's no such thing as a "causation element" of standing, either. That an injury be "fairly traceable" to defendants' challenged conduct does not equate to cause in fact or proximate cause, except on defendants' wish list.

Booking.com Entities have knowingly and intentionally used or benefitted, directly or indirectly, from the confiscated properties by offering, for economic benefit, reservations at the Trafficked Hotels, which constitutes trafficking that violates Title III of the LIBERTAD ACT.”).

Second, Title III does not, and cannot, provide any recourse to plaintiffs for the Cuban government’s confiscation of their property in Cuba. Title II of the Act, and not Title III, concerns claims for confiscation of property in Cuba. *See* 22 U.S.C. § 6067 (“Settlement of outstanding United States claims to confiscated property in Cuba”). The Conference Report for the Act notes that U.S. support for a transition government in Cuba under Title II (not Title III) is conditioned “on such government publicly committing itself, and taking appropriate steps to establish a procedure under its law or through international arbitration, to provide for the return of, or prompt, adequate, and effective compensation for, property confiscated by the Cuban Government on or after January 1, 1959.” HR Rep. No. 104-468, at 56 (1996). Thus, some other, not yet extant, procedure or law—not Title III—might someday (one hopes) provide for return of, or compensation for, property confiscated by the Cuban government. The notes to the Committee Report for 22 U.S.C. § 6082 leave no doubt:

> The committee of conference believes that this right of action is a unique but proportionate remedy for U.S. nationals who were targeted by the Castro regime when their property was wrongfully confiscated. The purpose of this civil remedy is, in part, to discourage persons and companies from engaging in commercial transactions involving confiscated property, and in so doing to deny the Cuban regime of Fidel Castro the capital generated by such ventures and to deter the exploitation of property confiscated from U.S. nationals. The substitute puts would-be investors on notice that if they traffic in confiscated property of U.S. nationals after this provision becomes law, they may be held liable to the legitimate U.S. owners in U.S. courts.
>
> It is the committee of conference’s intent not to supplant or undermine the Foreign Claims Settlement process, but to provide an additional remedy for U.S. nationals through which they may take action to protect their claim to a confiscated property in Cuba. The committee of conference expects that the existence of this remedy will make the recovery process less complicated because it will deter investment in and development of confiscated property in Cuba, thereby facilitating efforts by the rightful owners to reclaim, sell, or develop such property under the laws of a democratic Cuba.

HR Rep. No. 104-468, at 58 (1996). Title III’s purpose and remedy have nothing to do with anything the Cuban government did or does, except for the predicate fact of its having confiscated the Properties, a fact that this Court may (and should) judicially notice. Title III is solely aimed at traffickers like these defendants who use or benefit from property that was

confiscated. Thus, the injury in fact plaintiffs alleged is—and only can be—defendants' trafficking in the Properties without plaintiffs' permission and without compensating them. That injury is not only "fairly traceable" to defendants but is the proximate result of defendants' trafficking in the Properties.

Third, defendants wholly fail to address the self-evident fact that a favorable judicial decision awarding damages to plaintiffs is intended to, and obviously will, redress defendants' failure to compensate plaintiffs for trafficking in the Properties. As such, plaintiffs' injury unquestionably can be "redressed by a favorable judicial decision." *Spokeo*, 136 S. Ct. at 1547. In sum, defendants' "Title III standing" argument is meritless and should be rejected.

II. This Court Has Specific Jurisdiction Over Defendants Because They Regularly Transact Business Within Florida and this District, Avail Themselves of the Benefits of Their Presence here, and Committed a Tortious Act Here

Defendants argue that the complaint does not make out a *prima facie* case for personal jurisdiction over them. Expedia MTD at 6-10; Booking MTD at 5-12. Defendants' arguments lack merit for four reasons.

First, the complaint alleges that defendants engage in business in Florida because they "solicit and accept reservations from U.S. residents, including Florida residents." Am. Comp. ¶¶ 36, 39. Defendants admit this fact. *See* Expedia MTD at 1 ("Decades after the Cuban government allegedly confiscated the Properties, certain subsidiaries of Defendant Expedia Group, Inc. . . . began to offer travelers the ability to secure reservations at the Resorts through web-based systems . . . ."); Booking MTD at 1 ("Decades after the Cuban government allegedly confiscated the property at issue, defendant Booking.com B.V. . . . began to offer travelers the ability to secure reservations at hotels anywhere in the world—including at the Subject Hotels—through its web-based system."). Moreover, the complaint plainly alleges specific jurisdiction, because it is precisely this conduct of defendants in Florida from which the action arises and to which it relates. Am. Comp. ¶¶ 13-16.

This allegation, along with allegations that: defendants "regularly transact[] business in Florida[,]" Am. Comp. ¶ 12, by permitting travelers, "including Florida residents," to book online stays at the Resort through defendants' websites, *id.* ¶¶ 36, 39; plaintiffs reside in this District, and a substantial part of the challenged conduct occurred in this District, *id.* ¶¶ 2-4, 13-16, together make out a *prima facie* case for specific jurisdiction under Florida's long-arm statute. In the Eleventh Circuit, these allegations support specific jurisdiction. *E.g., Louis Vuitton*

Malletier, S.A. v. Mosseri, 736 F.3d 1339, 1351 (11th Cir. 2013) (A *prima facie* case for specific, long-arm jurisdiction was demonstrated by a complaint alleging that the defendant: (1) conducts business within this Judicial District; (2) engages in the sale of particular products giving rise to the claim within the Judicial District through interactive websites; (3) purposefully directs that conduct toward consumers in the Judicial District; (4) sells or offers that product on its website; and (5) actively advertised the product).

Second, defendants failed to provide any affidavits to contradict the complaint's well-pleaded personal-jurisdiction allegations that demonstrate their doing business in Florida. *See Stubbs v. Wyndham Nassau Resort & Crystal Palace Casino*, 447 F.3d 1357, 1360 (11th Cir. 2006) (When the plaintiff establishes a *prima facie* case of personal jurisdiction, the burden shifts to the defendant to "submit[] affidavits contrary to the allegations in the complaint."). Defendants could not in good faith rebut the complaint's "doing business in Florida" allegations, which might explain their failure even to try. As evidenced by their official state filings, defendants and their agent subsidiaries have been registered to do business in Florida for many years.[9] In fact, Expedia Group, Inc. has a Miami office at 701 Brickell Avenue, where it has

[9] *See Expedia, Inc. Registration*, Fla. Dept. of State, Div. Corp.'s, http://search.sunbiz.org/Inquiry/CorporationSearch/ByName (search in search bar for "Expedia, Inc.;" then follow the link for the first corporate entity listed as "Active") (last visited Mar. 5, 2020); *Orbitz, LLC Registration*, Fla. Dept. of State, Div. Corp.'s, http://search.sunbiz.org/Inquiry/CorporationSearch/ByName (search in search bar for "Orbitz, LLC;" then follow the link for the first corporate entity listed as "Active") (last visited March 5, 2020); *Hotels.com, LP Registration*, Fla. Dept. of State, Div. Corp.'s, http://search.sunbiz.org/Inquiry/CorporationSearch/ByName (search in search bar for "Hotels.com;" then follow the link for "Hotels.com, L.P.") (last visited March 5, 2020); *Hotels.com GP, LLC Registration*, Fla. Dept. of State, Div. Corp.'s, http://search.sunbiz.org/Inquiry/CorporationSearch/ByName (search in search bar for "Hotels.com;" then follow the link for "Hotels.com GP, LLC") (last visited March 5, 2020); *Booking.com Customer Service Center (U.S.A.) Inc. Registration*, Fla. Dept. of State, Div. Corp.'s, http://search.sunbiz.org/Inquiry/CorporationSearch/ByName (search in search bar for "Booking.com" then follow the link for the first corporate entity listed as "Active") (last visited April 17, 2020); *Booking.com (U.S.A.) Inc. Registration*, Fla. Dept. of State, Div. Corp.'s, http://search.sunbiz.org/Inquiry/CorporationSearch/ByName (search in search bar for "Booking.com" then follow the link for the second corporate entity listed as "Active") (last visited April 17, 2020). The Court may take judicial notice of the Florida Department of State's business registry. *Sream, Inc. v. PB Grocery, Inc., of Palm Beach*, 2017 WL 6409006, at *4 n.5 (S.D. Fla. 2017) (citing *Sziranyi v. Allan R. Dunn, M.D., P.A.*, 2009 WL 6613675, at *2 n.2 (S.D. Fla. 2009), *aff'd*, 383 Fed. Appx. 884 (11th Cir. 2010)).

approximately 100 employees.[10] These facts alone demonstrate that defendants are "operating, conducting, engaging in, or carrying on a business venture in [Florida] or having an office . . . in [Florida]." Fla. Stat. § 48.193(1)(a)(1). Defendants fail to face these facts and, with blinders on, offer a blindfold to the Court by arguing that "merely" operating a website accessible to Floridians where Floridians can book reservations at the Resorts is insufficient to satisfy Florida's long-arm statute, even though many cases have held that making sales through a website subjects the seller to long-arm jurisdiction. *C.f.* Expedia MTD at 9; Booking MTD at 10. That is neither what was alleged, nor the operative facts.

"In order to establish that a defendant is 'carrying on business' for the purposes of the Long–Arm statute, the activities of the defendant must be considered collectively and show a general course of business activity in the state for pecuniary benefit." *Pathman v. Grey Flannel Auctions, Inc.*, 741 F. Supp. 2d 1318, 1323 (S.D. Fla. 2010) (quoting *Future Tech. Today, Inc. v. OSF Healthcare Sys.*, 218 F.3d 1247, 1249 (11th Cir. 2000)). While isolated activity, such as maintaining a merely informational, non-interactive website accessible in Florida may be insufficient, "[a]ctive internet solicitation may subject a defendant to personal jurisdiction." *Pathman*, 741 F. Supp. 2d at 1324; *accord Renaissance Health Pub., LLC v. Resveratrol Partners, LLC*, 982 So. 2d 739, 742 (Fla. 4th DCA 2008) (Sales made to Florida residents through interactive websites were "sufficient to subject defendants to jurisdiction."). Defendants do not and cannot deny that the complaint alleges that they solicited and made sales to Florida residents through their interactive websites, which exist for that very purpose. These facts satisfy Florida's "doing business" provision, as the *Pathman* and *Renaissance Health* courts found. They also satisfy due process.

Courts in this District routinely apply the sliding scale first identified by the court in *Zippo Mfg. Co. v. Zippo Dot Com, Inc.*, 952 F. Supp. 1119, 1124 (W.D. Pa. 1997) to determine the legal sufficiency of a defendant's internet contacts with Florida for due process purposes. *See, e.g.*, *Pathman*, 741 F. Supp. 2d at 1325; *Foreign Imported Prods. & Pub., Inc. v. Grupo Indus. Hotelero, S.A.*, 2008 WL 4724495, at *7 (S.D. Fla. 2008); *Hartoy Inc. v. Thompson*, 2003

[10] Brian Bandell, *Inside Look: Expedia opens office on Brickell for nearly 100 employees*, S. Florida Bus. J. (Jan. 12, 2016), https://www.bizjournals.com/southflorida/news/2016/01/12/inside-look-expedia-opens-office-on-brickell-for.html.

WL 21468079, at *4 (S.D. Fla. 2003). The *Zippo* sliding scale describes the minimum contacts that support personal jurisdiction:

> At one end of the spectrum are situations where a defendant clearly does business over the internet. If the defendant enters into contracts with residents of a foreign jurisdiction that involve the knowing and repeated transmission of computer files over the internet, personal jurisdiction is proper. At the opposite end are situations where a defendant has simply posted information on an internet website which is accessible to users in a foreign jurisdiction. A passive website that does little more than make information available to those who are interested in it is not grounds for exercise [of] personal jurisdiction. The middle ground is occupied by interactive website where a user can exchange information with the host computer. In these cases, the exercise of jurisdiction is determined by examining the level of interactivity and commercial nature of the exchange of information that occurs on the website.

952 F. Supp. at 1124. Defendants' Florida contacts are at the "end of the spectrum" where minimum contacts exist, because defendants "clearly do[] business over the internet." *Zippo*, 952 F. Supp. at 1124. Defendants' very business models, and their multi-billion-dollar businesses, are based on the sale of travel and lodging over the internet. Am. Comp. ¶¶ 47-60. It is frivolous for defendants to argue that they merely maintain "informational" websites accessible to Floridians. *Cf.* Expedia MTD at 9; Booking MTD at 10. "[C]learly[,] [defendants] do[] business over the internet" and enter into "contracts with residents of [Florida] that involve the knowing and repeated transmission of computer files over the internet . . . ." *Zippo*, 952 F. Supp. at 1124. Accordingly, "personal jurisdiction is proper."[11] *Id.*

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[11] Defendants' reliance on *Storms v. Haugland Energy Grp., LLC*, 2018 WL 4347603, at *8 (S.D. Fla. 2018), and *Lemoine v. Wong*, 2017 WL 5127592, at *4 (S.D. Fla. 2017), is misplaced. The *Storms* defendant filed an affidavit challenging personal jurisdiction that the plaintiff failed to rebut. The court found it unclear that defendant had "advertised" a job in Florida, and held that merely maintaining a website, without more, was insufficient. *Storms*, 2018 WL 4347603, at *6-*8. The *Lemoine* defendant also challenged personal jurisdiction with affidavits, stating "that: (1) [defendant] has no contacts with, and has never had any contacts with, the State of Florida; (2) [defendant] does not do business in the State of Florida and has never conducted business in the State of Florida; (3) [defendant] does not maintain an office in the State of Florida and has never maintained an office in the State of Florida; and (4) [defendant] does not advertise in the State of Florida and has never advertised in the State of Florida." 2017 WL 5127592, at *3-*4 (internal quotations omitted). Moreover, the *Lemoine* defendant's website did not "contain content reflecting that a dealer or consumer could purchase a shotgun over the internet." *Id.* at *6, n.4. In dispositive contrast, these defendants' ***entire business*** is conducted, and ***all of their sales*** are made, over the internet.

While defendants may be correct in stating that the Eleventh Circuit has not yet adopted *Zippo* as a bright-line test, it—along with many courts of this District—has used the *Zippo* analysis in cases analogous to this one, and so have the courts of eight federal Circuits.[12] In *Pathman*, Judge King found that "[t]he Eleventh Circuit has not directly addressed the issue presented in *Zippo*, however it has relied on the sliding scale analysis provided by the *Zippo* Court." 741 F. Supp. 2d 1318, 1325 (S.D. Fla. 2010) (citing *Oldfield v. Pueblo de Bahia Lora, S.A.*, 558 F.3d 1210, 1220, n.26 (11th Cir. 2009)); *accord Kumbrink v. Hygenic Corp.*, 2016 WL 5369344, at *3, n.3 (S.D. Fla. 2016) ("Some courts have applied the 'sliding scale' analysis set out in *Zippo Mfg. Co. v. Zippo Dot Com, Inc.*, 952 F. Supp. 1119 (W.D. Pa. 1997) to conclude whether there was purposeful availment in cases where jurisdiction may arise based on a website."); *Roblor Mktg. Group, Inc. v. GPS Indus., Inc.*, 64 F. Supp. 2d 1130, 1154 (S.D. Fla. 2009) (Where no sales could be made over the defendant's website, and no Florida sales were made at all), Judge Moreno "declined to find that our determination under the sliding scale analysis is dispositive," stating that it would use *Zippo* "as a guidepost but also turn to analyze the purposeful availment requirement under a more traditional approach.") (adopting report and recommendation).[13]

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[12] Courts of this District are hardly alone in using the *Zippo* framework, either as a tool or a test, and eight federal Circuits have adopted it. *See, e.g.*, *Toys "R" Us, Inc. v. Step Two, S.A.*, 318 F.3d 446, 452-55 (3d Cir. 2003); *Gator.Com Corp. v. L.L. Bean Inc.*, 341 F.3d 1072, 1079 (9th Cir. 2003), *vacated as moot*, 398 F.3d 1125 (9th Cir. 2005); *Lakin v. Prudential Sec., Inc.*, 348 F.3d 704, 711 (8th Cir. 2003); *Neogen Corp. v. Neo Gen Screening, Inc.*, 282 F.3d 883, 890 (6th Cir. 2002); *ALS Scan, Inc. v. Digital Serv. Consultants, Inc.*, 293 F.3d 707, 712-14 (4th Cir. 2002); *Gorman v. Ameritrade Holding Corp.*, 293 F.3d 506, 513 (D.C. Cir. 2002); *Mink v. AAAA Dev. LLC*, 190 F.3d 333, 336-37 (5th Cir. 1999); *Soma Med. Int'l v. Standard Chartered Bank*, 196 F.3d 1292, 1296-97 (10th Cir. 1999).

[13] As in *Roblor*, *supra*, courts of this District have used *Zippo* at least as a "guidepost" for determining purposeful availment in cases involving a defendant's website. *E.g.*, *Alternate Energy Corp. v. Redstone*, 328 F. Supp. 2d 1379, 1382 (S.D. Fla. 2004) ("In determining whether internet contacts satisfy the above factors, Florida courts have applied the *Zippo* precedent, which holds that engaging in commercial activity over the internet constitutes sufficient minimum contacts to satisfy due process requirements, but merely posting information on the internet does not."); *Schuster v. Carnival Corp.*, 2011 WL 13220428, at *7-*8 (S.D. Fla. 2011) ("In determining whether or not a defendant's website transmits sufficient information so that the party subjects itself to the personal jurisdiction of the forum where plaintiff encountered the electronic information, many courts rely on the 'sliding scale' model set out in [*Zippo*]. . . . The Court considers the *Zippo* sliding scale as one factor in its analysis.") (internal quotes and citations omitted); *Foreign Imported Prods. and Pub., Inc. v. Grupo Indus.*

Further, as soon as plaintiffs receive any meaningful discovery from these defendants, the fact that persons in Florida booked stays at the Resorts on the defendants' websites will become indisputable, and any further debate over personal jurisdiction and *Zippo* will be frivolous, if it wasn't already. The *Kumbrink* court held that such analysis was "unnecessary in this case since the website's existence alone was not Defendant's sole contact, ***as it conducted actual sales in Florida***. Even if the 'sliding scale' model was used, the website would be on the 'active' end of the spectrum and personal jurisdiction would be proper." 2016 WL 5369344, at *3, n.3 (emphasis added); *accord Hartoy Inc. v. Thompson*, 2003 WL 21468079, at *4–5 (S.D. Fla. 2003) ("The fact that the website allowed the placement of orders means that the site could not have only presented passive advertisement. Such invitation to commercial transaction, combined with the fact that Florida residents actually availed themselves of the opportunity to purchase is sufficient to subject [defendant] to jurisdiction in this forum.").

The sales made on defendants' websites end this inquiry, but even if no sales had been made, defendants would be unable to (and did not) dispute that they maintain or have maintained websites that offer sales of rooms reservations at hotels in Cuba, including the Resorts. As noted, courts of this District frequently follow *Zippo* (as do Florida courts) or use it as a tool to determine purposeful availment by defendants with interactive websites. *E.g.*, *Pathman*, 741 F. Supp. 2d at 1325 ("The Eleventh Circuit has not directly addressed the issue presented in *Zippo*, however it has relied on the sliding scale analysis provided by the *Zippo* Court.") (citing *Oldfield v. Pueblo de Bahia Lora, S.A.*, 558 F.3d 1210, 1220, n.26 (11th Cir. 2009)).

At bottom, these defendants made sales in Florida over a website designed and intended to make those sales. They purposely availed themselves of the business activity in Florida that gives rise to this action. Their due process objection is frivolous. Personal jurisdiction exists.

Hotelero, S.A., 2008 WL 4724495, at *8 (S.D. Fla. 2008) (**"*[S]everal Florida District Courts of Appeal have endorsed the Zippo framework, drawing a distinction between passive websites and interactive websites in assessing jurisdiction. . . . The reach of the Florida long-arm statute is a question of Florida law, and federal courts are required to construe the statute as would the Florida Supreme Court. I therefore apply the Zippo framework to my analysis of Defendants' website.*"**) (internal citations omitted) (emphasis added); *Figueroa v. Sharper Image Corp.*, 2006 WL 8431818, at *9 (S.D. Fla. 2006) ("[I]n the context of a jurisdictional analysis, electronic contacts are defined on a 'sliding scale' when determining minimum contacts. On the one end of the spectrum are passive websites which provide no basis for jurisdiction; on the other end are active websites which properly allow for exercise of jurisdiction.") (citing *Zippo*); *JB Oxford Holdings, Inc. v. Net Trade, Inc.*, 76 F. Supp. 2d 1363, 1367 (S.D. Fla. 1999) ("This court, however, finds the line of cases following the rationale of [*Zippo*] to be more persuasive.")

Third, defendants' trafficking in plaintiffs' Properties directly arises from their online advertisement of, and their booking of rooms at, the Resorts, which is all done on their websites. Specific jurisdiction, therefore, comports with due process. Under Florida's long-arm statute, specific jurisdiction exists over a defendant "'where the cause of action arises from the doing of business in Florida . . . .'" *Nicolet, Inc. v. Benton*, 467 So. 2d 1046, 1049 (Fla. 1st DCA 1985) (quoting *Bloom v. A.H. Pond Co.*, 519 F. Supp. 1162, 1168 (S.D. Fla. 1981)). There must be "some nexus or connection between the business that is conducted in Florida and the cause of action alleged." *Id.* That nexus is obvious here.

Under Title III, a defendant is subject to liability for trafficking if it "knowingly and intentionally . . . engages in a commercial activity using or ***otherwise benefiting from confiscated property*** . . . ." 22 U.S.C. § 6023(13) (emphasis added).[14] There is no question that these defendants are engaged in a commercial activity, namely acting as travel agents for Florida residents and selling reservations for rooms at the Resorts. Nor can they dispute that they have derived a direct benefit from advertising, facilitating and taking room reservations at the Resorts.

The complaint alleges that defendants use several different profit models: the merchant model; the agency model; and, for the Expedia Entities, the advertising model. Am. Comp. ¶¶ 48, 55. Under the merchant and agency models, the complaint alleges that defendants receive commissions and other revenue for facilitating the booking of hotel rooms. *Id.* Under the advertising model, defendants "offer travel and non-travel advertisers access to a potential source of incremental traffic and transactions through our various media and advertising offerings on trivago and transaction-based websites." *Id.* ¶ 48. Defendants wholly ignore these allegations. Taken together, the complaint's allegations are sufficient to demonstrate that plaintiffs' injury results from defendants' advertising, facilitating, and selling room reservations at the Resorts, which constitutes trafficking under Title III.

Moreover, at this early stage of the litigation, plaintiffs are without knowledge of the actual number of Florida residents that booked reservations at the Resorts through defendants' websites. That number will not be small, but if the Court were to have any doubt about the sufficiency of defendants' Florida contacts (out of which this action arises), jurisdictional discovery would be warranted. *E.g., Chudasama v. Mazda Motor Corp.*, 123 F.3d 1353, 1367

[14] As noted, "knowing and intentionally" in the context of the Act means nothing more than acting "on purpose." Defendants were not sleepwalking when they trafficked in the Properties.

(11th Cir. 1997) ("Resolution of a pretrial motion that turns on findings of fact—for example, a motion to dismiss for lack of personal jurisdiction pursuant to Fed. R. Civ. P. 12(b)(2)—may require some limited discovery before a meaningful ruling can be made."). Such discovery would reveal: (1) the exact number of reservations Florida residents made at the Resorts using defendants' services; (2) other contacts with Florida residents related to the Resorts, including emails or other communications sent by defendants directly to persons who defendants knew were Florida residents; and (3) the nature in which defendants profited from the reservations they sold to Florida residents.

Fourth, plaintiffs have adequately alleged specific jurisdiction over defendants for committing tortious acts within Florida. Am. Comp. ¶ 12 ("The Court has personal jurisdiction over the Expedia and Booking.com Entities under Fla. Stat. §§ 48.193(1)(a)(1), (2) and (6), and Fla. Stat. § 48.193(2) because they maintain and carry on continuous and systematic contacts with Florida, regularly transact business within Florida, regularly avail themselves of the benefits of their presence in Florida, committed a tortious act within Florida, caused injury within Florida by committing acts outside of Florida while engaging in solicitation within Florida . . . ."); *id.* ¶ 36 ("Floridians could reserve vacation packages at the Cuatro Palmas from the Expedia and Booking.com Entities' websites, securing those reservations with a credit card. The Expedia and Booking.com Entities solicit and accept reservations from U.S. residents, including Florida residents."); *id.* ¶ 39 ("Floridians could reserve vacation packages at the Memories Jibacoa directly from the Expedia and Booking.com Entities' websites, securing those reservations with a credit card. The Expedia and Booking.com Entities solicit and accept reservations from U.S. residents, including Florida residents.").

Under Fla. Stat. § 48.193(1)(a)(2), "a person, whether or not a citizen or resident of this state, who personally or through an agent . . . commit[s] a tortious act within this state . . . submits himself or herself . . . to the jurisdiction of the courts of this state . . . ." Fla. Stat. § 48.193(1)(a)(2) (2019). "Under Florida law, a nonresident defendant commits 'a tortious act within Florida' when he commits an act *outside* the state that causes *injury within Florida*." *Mosseri*, 736 F.3d at 1353 (quoting *Licciardello v. Lovelady*, 544 F.3d 1280, 1283 (11th Cir. 2008)) (emphasis in original). In *Mosseri*, the court held that "a trademark infringement on an

Internet website causes injury and occurs in Florida by virtue of the website's accessibility in Florida." *Id.* at 1354 (citing *Lovelady*, 544 F.3d at 1283).[15]

The *Mosseri* court held that "we need not decide whether trademark injury necessarily occurs where the owner of the mark resides, as the Florida district courts have held, *because in this case the alleged infringement clearly also occurred in Florida by virtue of the website's accessibility in Florida*." *Mosseri*, 736 F.3d at 1354 (citing *Lovelady*, 544 F.3d at 1283) (emphasis in original). In other words, the injury occurred in Florida not only because the plaintiffs resided in Florida, but also because the websites through which defendants committed the tort was accessible in and targeted at Florida. This case is no different—not only do plaintiffs reside in Florida, but the website through which defendants tortiously trafficked in the Properties was accessible in and targeted at Florida. Thus, this Court has personal jurisdiction over defendants under Florida Statute § 48.193(1)(a)(2).

III. The Booking Entities and Expedia Entities Are Subject to General Jurisdiction Because They Are Engaged in Substantial and Not Isolated Activity in Florida

Based on defendants' voluminous and constant business activity in Florida discussed above, the Complaint alleged that they are subject to general jurisdiction because of their "continuous and systematic" business activity here. Am. Comp. ¶ 12. "Substantial and not isolated" is the Florida Long-Arm Statute's equivalent of this general jurisdiction standard. *See Caiazzo v. Am. Royal Arts Corp.*, 73 So. 3d 245, 250 (Fla. 4th DCA 2011); Fla. Stat. § 48.193(2). In connection with sales through an online website, Florida courts have determined that the question of general jurisdiction focuses largely on whether the total sales in Florida are *de minimis* when compared to sales in other states. *Organic Mattresses, Inc. v. Envtl. Res. Outlet, Inc.*, 2017 WL 5665354, at *9 (S.D. Fla. 2017) (citing *Caiazzo* 73 So. 3d at 260 ("Florida cases have found 'continuous systematic business contacts' to confer general jurisdiction where a nonresident defendant's activities are extensive and pervasive, in that a significant portion of the defendant's business operations or revenue derived from established commercial relationships in the state.")); *accord Magwitch, LLC v. Pusser's West Indies Ltd.*, 200 So. 3d 216 (Fla. 2d DCA 2016).

[15] Trademark infringement, like strict product liability and trafficking under the Act, is wrongful conduct that does not require a showing of "bad intent," but nonetheless subjects the actor to "tortious act" long-arm jurisdiction.

If the Court deems jurisdictional discovery necessary, it will show that the Booking Entities' and Expedia Entities' revenue generated from Florida is not *de minimis* when compared to other states. It likely will show that many millions of dollars and a large portion of the Booking Entities' and Expedia Entities' revenue comes from Florida. Millions of dollars in sales from Florida, driven by an extensive, ongoing, and sophisticated sales effort involving direct email solicitations and geo-targeting marketing campaigns, qualifies as "substantial" or "continuous and systematic" commercial activity. *E.g.*, *Mieczkowski v. Masco Corp.*, 997 F. Supp. 782 (E.D. Tex.1998) (general jurisdiction existed over defendant that had sold and shipped nearly $6 million of products to residents of the forum state in the preceding six years).

The Booking Entities and Expedia Entities have offices and employees in Florida, conduct substantial internet sales in Florida, continuously solicit business from Florida through serial emails to Florida residents, maintain business relationships with numerous Florida vendors, and target Florida through geo-targeting marketing campaigns. There is nothing "random, fortuitous, or attenuated" about asserting general jurisdiction over the Booking and Expedia Entities, because they have deliberately and purposefully availed themselves (on a large scale), of the benefits of doing business in Florida. *E.g.*, *Metro. Life Ins. Co. v. Robertson–Ceco Corp.*, 84 F.3d 560, 572 (2d Cir. 1996) (Extensive mail-order and telephone sales alone can support general jurisdiction if they are sufficiently "continuous and systematic."); *Mich. Nat'l Bank v. Quality Dinette, Inc.*, 888 F.2d 462, 466 (6th Cir. 1989) (same).

IV. Plaintiffs Adequately Alleged Their Claims to the Properties, Which Are in Fact "Property" Under Title III, Because the "Residential Purpose" Carveout in Title III Refers to Current—Not Pre-Confiscation—Uses of Confiscated Property

The Expedia Entities next argue that plaintiffs "fail to allege that the Properties were used for anything other than 'residential purposes' at the time they were allegedly confiscated." Expedia MTD at 18. Because plaintiffs referred to the Properties that were stolen from them as "houses" or "homes," the Expedia Entities argue that they are not "property" under the Act because, as of March 1, 1996, they were not the subject of a certified claim or occupied by a Cuban official. *Id*. This argument has no merit, because Title III does not say, much less mean, what defendants wish it did. It says this:

> (A) The term 'property' means any property . . . whether real, personal, or mixed, and any present, future, or contingent right, security, or other interest therein, including any leasehold interest.

> (B) For purposes of subchapter III of this chapter, the term 'property' does not include real property used for residential purposes unless, as of March 12, 1996—
>
> (i) the claim to the property is held by a United States national and the claim has been certified under title V of the International Claims Settlement Act of 1949 . . . ; or
>
> (ii) the property is occupied by an official of the Cuban Government or the ruling political party in Cuba.

22 U.S.C. § 6023(12). Subsection (B)'s "residential purpose" carveout does not refer to pre-confiscation, residential uses of real property. It does not exclude "real property that ***was*** used for residential purposes," or "real property that ***formerly*** was used for residential purposes," or "real property that was used, ***prior to its confiscation***, for residential purposes." It excludes "real property ***used*** for residential purposes." *Id.* The word "used" is present tense, and this provision expressly provides that no Title III claim will lie as to confiscated property ***now being used*** as a residence, unless (1) a member of the Castro regime was living there on March 12, 1996, or (2) the claim is a certified claim held by a person who was a U.S. national on March 12, 1996. A hotel built on stolen property is not a residence, period, full stop, and the Court should decline the Expedia Entities' invitation to improperly "add or subtract words from a statute." *Friends of Everglades v. S. Fla. Water Mgmt. Dist.*, 570 F.3d 1210, 1224 (11th Cir. 2009).

Even if the plain language of 22 U.S.C. § 6023(12) were not unambiguous in stating that the "residential purposes" carveout refers to the ***current use*** of the property, this is the only reading that would be consistent with Title III's other provisions and stated intent—to punish traffickers in confiscated property, not innocent people who might be living in such properties.[16] *See, e.g.*, *Patel v. U.S. Att'y Gen.*, 917 F.3d 1319, 1326 n.5 (11th Cir. 2019) ("[O]ne of the most basic interpretative canons [is] that a statute should be construed so that effect is given to all its provisions, so that no part will be inoperative or superfluous, void, or insignificant."); *In re*

[16] Congressional intent to punish and deter traffickers is further evidenced by the exception to the residential property carveout for property that "is occupied by an official of the Cuban Government or the ruling political party in Cuba," as of March 12, 1996. 22 U.S.C. § 6023(12)(B)(ii). Such occupation on the effective date of the Act renders trafficking in "residential property" actionable, in furtherance of congressional intent to punish members of the Castro regime and their accomplices, not the Cuban people.

Coffman, 766 F.3d 1246, 1250 (11th Cir. 2014) (applying the canon that related statutes should be read *in para materia* and "interpreted together, as though they were one law").

In enacting Title III, Congress made the following findings:

> • The wrongful confiscation or taking of property belonging to United States nationals by the Cuban Government, and the subsequent exploitation of this property at the expense of the rightful owner, undermines the comity of nations, the free flow of commerce, and economic development. [22 U.S.C. § 6081(2)];
>
> * * *
>
> • The Cuban Government is offering foreign investors the opportunity to purchase an equity interest in, manage, or enter into joint ventures using property and assets some of which were confiscated from United States nationals. [22 U.S.C. § 6081(5)];
>
> * * *
>
> • This "trafficking" in confiscated property provides badly needed financial benefit, including hard currency, oil, and productive investment and expertise, to the current Cuban Government and thus undermines the foreign policy of the United States . . . . [22 U.S.C. § 6081(6)]

These findings demonstrate express congressional concern over foreign investors becoming involved in joint ventures with the Castro regime to exploit confiscated property. There is no better example of this than building a hotel on stolen beachfront property and trafficking that property online, which is exactly what happened here. In view of these findings, Congress stated that "[t]o deter trafficking in wrongfully confiscated property, United States nationals who were the victims of these confiscations should be endowed with a judicial remedy in the courts of the United States that would deny traffickers any profits from economically exploiting Castro's wrongful seizures." 22 U.S.C. § 6081(11).

To exclude property that was used for residential purposes at any time prior to confiscation would be inconsistent with the Act's language and history and would undermine congressional intent to deter trafficking in confiscated property. Thus, even if 22 U.S.C. § 6023(12) did not unambiguously carve out only property currently used for residential purposes, Title III's findings and stated purpose would require it to be so construed.

V. Plaintiffs Adequately Alleged That They Acquired Their Claims Under Title III Prior to the Statute's Enactment

Under Title III, "a United States national may not bring an action under this section on a claim to the confiscated property unless such national acquires ownership of the claim before March 12, 1996." 22 U.S.C. § 6082(a)(4)(B). In the complaint, plaintiffs set out the lines of succession for the Properties through which plaintiffs acquired the Properties. Am. Comp. ¶¶ 19-

22, 24-27, 29-31. Plaintiffs further alleged that "[s]ince its confiscation, and as of the time of filing this lawsuit, Mario Del Valle Sr., and subsequently the Del Valle Heir, have been rightful owners of the claim to the Del Valle Property which is being trafficked by Blue Diamond, and the Expedia and Booking.com Entities," *id*. ¶ 40; "[s]ince its confiscation, and as of the time of filing this lawsuit, Laureano Falla Falla and Eugenio Crabb, and subsequently the Falla Heir, have been rightful owners of the claim to the Falla Property which is being trafficked by Blue Diamond, and the Expedia and Booking.com Entities," *id*. ¶ 41; and "[s]ince its confiscation, and as of the time of filing this lawsuit, Carmen Muniz, and subsequently the Muniz Heir, have been rightful owners of the claim to the Muniz Property which is being trafficked by Blue Diamond, and the Expedia and Booking.com Entities." *Id*. ¶ 42.

The Expedia Entities argue that "Plaintiffs' complaint still lacks factual allegations from which one could draw a reasonable inference that the Plaintiffs inherited and now own a claim to a property interest in the Properties[,]" Expedia MTD at 13, and that even if it had, "Falla and Pou still fail to state a cause of action under Title III because they do not allege that they owned the claims to the Falla and Muniz Properties on March 12, 1996." *Id*. Similarly, the Booking Entities argue that "plaintiffs have not sufficiently alleged that they have an actionable ownership interest in the confiscated property" because "the Cuban government's confiscation extinguished the property owners' property rights," Booking MTD at 15-16, and "the complaint only vaguely implies that the plaintiffs allegedly inherited the properties, and the plaintiffs are 'one of the living heirs' and the 'rightful owners of the claim to the properties." *Id*. at 16.

With respect to the supposed lack of factual allegations, we are in federal court in 2020, not 1820. No bill of particulars was required, and plaintiffs adequately alleged their ownership interests under the Act. As to defendant's argument that plaintiffs did not own a claim prior to March 12, 1996, Title III expressly defines property to mean "any property . . . whether real, personal, or mixed, and any present, ***future, or contingent right***, security, or other interest therein, including any leasehold interest." 22 U.S.C. § 6023(12)(A) (emphasis added). This definition makes clear that plaintiffs, whose parents owned property in Cuba that the Castro regime confiscated, had an actionable interest in the Property when Title III was enacted. And with respect to the Booking Entities' theory that plaintiffs do not own claim under Title III because the Cuban government confiscated the Properties, this theory incorrectly conflates a claim to property and a property interest.

"First, the plain language of the Act states that 'any person . . . that traffics in property which was confiscated by the Cuban Government . . . shall be liable to any United States national *who owns the claim* to such property.'" *Havana Docks Corp. v. Carnival Corp.*, Case No. 19-cv-21724-BB (S.D. Fla. 2019), ECF No. 47 at 8 (citing 22 U.S.C. § 6082(A)) (emphasis in opinion). Thus, the Act does not provide when trafficking had to occur, and provides only that trafficking must occur while a party holds a claim to the property. The *Havana Docks* court recently held that the defendant there had "incorrectly conflate[d] a claim to a property and a property interest[,]" which plaintiffs clearly had taken from them by the Cuban government when it stole the Properties. *Havana Docks Corp.*, ECF No. 47 at 8. *Accord Garcia-Bengochea v. Carnival Corp.*, Case No. 19-cv-21725-JLK (S.D. Fla. 2019), ECF No. 41 at 11 ("Based on contemporary dictionary definitions, Congress would have understood that a *claim* to confiscated property is substantially broader than a *direct interest* in such property."). Plaintiffs alleged legally sufficient property claims, and Defendants' arguments should be rejected.

VI. The "Incident to Lawful Travel" Exception Is Not Applicable Because Defendants Are Not Engaging in Transactions and Uses of Property That Are Incident and Necessary to Lawful Travel

Defendants also argue that this case should be dismissed because booking rooms at the Resorts is "incident to lawful travel" and is "necessary to the conduct of such travel." *See* Expedia MTD at 15-18; Booking MTD at 18-20. Defendants are wrong for at least four reasons. ***First***, in providing online booking services for the Resorts, defendants are not engaging in "transactions and use[] of property" at all. ***Second***, the "incident to lawful travel" exception is an affirmative defense that defendants bear the burden of pleading and proving, which cannot be resolved on a motion to dismiss. ***Third,*** defendants' trafficking is not "necessary to the conduct of [lawful] travel" ***Fourth***, the general license defendants claim authorizes their trafficking does not give them blanket permission to provide hotel reservation services, and requires meticulous compliance with other laws and regulations regarding the persons to whom defendants may lawfully provide such services and under what circumstances, and the question whether defendants complied is a question of fact that cannot be resolved on a motion to dismiss.

A. *The "Incident to Lawful Travel" Exception Does Not Apply to Defendants' Online Booking Activities Because Those Activities Did Not Involve Transactions in and Uses of Confiscated Property*

The Act defines "trafficking" as follows:

> As used in subchapter III, and except as provided in subparagraph (B), a person 'traffics' in confiscated property if that person knowingly and intentionally—
>
> (i) Sells, transfers, distributes, dispenses, brokers, manages, or otherwise disposes of confiscated property, or purchases, leases, receives, possesses, obtains control of, manages, uses, or otherwise acquires or holds an interest in confiscated property,
> (ii) engages in a commercial activity using or otherwise benefiting from confiscated property, or
> (iii) causes, directs, participates in, or profits from, trafficking (as described in clause (i) or (ii)) by another person, or otherwise engages in trafficking (as described in clause (i) or (ii)) through another person,
> without the authorization of any United States national who holds a claim to the property.

22 U.S.C. § 6023(13)(A). From that definition, Congress excluded certain activities that otherwise would have been considered "trafficking," including "transactions and uses of property incident to lawful travel to Cuba, to the extent that such transactions and uses of property are necessary to the conduct of such travel . . . ." 22 U.S.C. § 6023(13)(B) (the "Exception").

Plaintiffs have not alleged that defendants have transacted in and used ***any real*** property in Cuba, let alone the Properties confiscated from plaintiffs. The complaint alleges that defendants have trafficked in the Properties by "offering, for economic benefit, reservations at the Trafficked Hotels . . . ." Am. Comp. ¶ 88. Defendants have provided online booking services; they have not "used" the Properties. "Use" means "[t]he application or employment of something; esp., a long-continued possession and employment of a thing for the purpose for which it is adapted." Black's Law Dictionary (11th ed. 2019). Plaintiffs have not alleged, and defendants do not contend, that defendants have any legal or possessory interest in the Properties that would entitle them to "apply" or "enjoy" the Properties in any respect. Nor have plaintiffs alleged, or defendants contended, that defendants transacted in or used the Properties at any time.[17] Accordingly, this Exception is wholly inapplicable to defendants' trafficking, which does not involve transactions in and use of the Properties at all.

[17] 22 U.S.C. § 6023(13)(B) sets out the exception as a conjunctive—"transactions ***and*** use of property . . . ." (emphasis added). Thus, in order to come within the exception, defendant would have to plead and prove that it both transacted in ***and*** used property. There is not, and never will be any allegation that defendants did either, until and unless they assert affirmative defenses.

B. *Plaintiffs Were Not Required to Allege That Defendants' Trafficking Was Not Incident to Lawful Travel*

Defendants demand dismissal because plaintiffs failed to allege a negative—that the "incident to lawful travel exception" (the "Exception") does ***not*** apply, i.e., that defendants' online booking of room reservations at the Resort (defendants' trafficking) was ***not*** "incident to lawful travel" and "not necessary to the conduct of such travel." This argument is based on a faulty premise—that the elements of this Title III claim include the inapplicability of the Exception. Two courts of this District have held that the Exception is an affirmative defense which a defendant must plead and prove. *Garcia-Bengochea v. Carnival Corp.*, Case No. 19-cv-21725-JLK at ECF No. 41, at 6-7 ("Based on the text and structure of Helms-Burton, the Court holds that the lawful travel exception is an affirmative defense to trafficking that must be established by Carnival, not negated by Plaintiff."); *Havana Docks Corp. v. Carnival Corp.*, Case No. 19-cv-21724-BB at ECF No. 47, at 5 ("Based on the language of the Libertad Act, the Court agrees with the Plaintiff that the 'lawful travel exception' is an affirmative defense to trafficking . . . Therefore, this exception must be established by Carnival and Plaintiff was not required to negate this exception in its Complaint.").

"An affirmative defense 'admits to the complaint, but avoids liability, wholly or partly, by new allegations of excuse, justification, or other negating matters.'" *Boigris v. EWC P&T, LLC*, 2019 WL 5457072, at *2 (S.D. Fla. 2019) (quoting *Adams v. Jumpstart Wireless Corp.*, 294 F.R.D. 668, 671 (S.D. Fla. 2013)); *accord Losada v. Norwegian (Bah.) Ltd.*, 296 F.R.D. 688, 690 (S.D. Fla. 2013) (same); *VP Props. & Devs. LLLP v. Seneca Specialty Ins. Co.*, 645 Fed. pp'x. 912, 916 (11th Cir. 2016) (same). In other words, "[p]laintiffs are not required to negate an affirmative defense in their complaint." *Padilla v. Porsche Cars N. Am., Inc.*, 391 F. Supp. 3d 1108, 1112 (S.D. Fla. 2019) (quoting *La Grasta v. First Union Sec., Inc.*, 358 F.3d 840, 845 (11th Cir. 2004) (internal citations omitted); *accord Meacham v. Knolls Atomic Power Lab.*, 554 U.S. 84, 93 (2008) (holding that the burden of pleading and proving an affirmative defense rests with the "one who claims its benefits"—the defendant). Accordingly, a plaintiff is not required to allege the non-existence of an affirmative defense. *Cunningham v. Yellowstone Capital LLC*, 2016 WL 11163899, at *2 (S.D. Fla. 2016); *accord Manfred v. Bennet Law, PLLC*, 2012 WL 6102071, at *2 (S.D. Fla. 2012) (In a Telephone Consumer Protection Act ("TCPA") case, "prior express consent is an affirmative defense, not an element of the claim[,]" and accordingly, "[p]laintiff need not plead that he did not give his prior express consent.").

"The touchstone for determining the burden of proof under a statutory cause of action is the statute itself." *Thomas v. George, Hartz, Lundeen, Fulmer, Johnstone, King, & Stevens, P.A.*, 525 F.3d 1107, 1110 (11th Cir. 2008). Where a statute "exempt[s] otherwise illegal conduct by reference to a further item of proof . . . the burden of persuasion falls on the 'one who claims its benefits.'" *Meacham*, 554 U.S. at 93 (quoting *FTC v. Morton Salt Co.*, 334 U.S. 37, 44-45 (1948)). In this case, the Exception is a statutorily-created exception to liability under Title III. In other words, it carves out a limited, very specific category of lawful conduct ("transactions and uses of property incident to lawful travel to the extent that such transactions and uses of property are necessary to the conduct of such travel") from otherwise unlawful conduct ("trafficking"). *See* 22 U.S.C. § 6023(13)(B)). This is far from unique, as other statutory schemes employ the same structure, which compels concluding that the exception is an affirmative defense.

For instance, the TCPA makes using certain calling technology unlawful, except for calls made for emergency purposes or with the prior express consent of the called party:

> It shall be unlawful for any person within the United States, or any person outside of the United States if the recipient is within the United States . . . [t]o make a call ***(other than a call made for emergency purposes or made with the prior express consent of the called party)*** using any automatic telephone dialing system or an artificial or prerecorded voice . . . .

47 U.S.C. § 227(b)(1)(A)(iii) (emphasis added). In *Osorio v. State Farm Bank, F.S.B.*, 746 F.3d 1242 (11th Cir. 2014), the plaintiff alleged a TCPA violation and the defense argued consent. The 11th Circuit held that the consent exception was an affirmative defense and, accordingly, that the burden was on the defendant to plead and prove the exception applied. *Id*. at 1253.

Similarly, in *Meacham*, the U.S. Supreme Court addressed an exemption to the Age Discrimination in Employment Act (the "ADEA"). The Court noted that the "ADEA's general prohibitions against age discrimination . . . are subject to a separate provision . . . creating exemptions for employer practices otherwise prohibited under [various subsections of the ADEA]." *Meacham*, 554 U.S. at 91 (internal quotes and citations omitted). The Court found that "[g]iven how the statute reads, with exemptions laid out apart from the prohibitions (and expressly referring to the prohibited conduct as such), it is no surprise that we have already spoken of the BFOQ and RFOA provisions as being among the ADEA's 'five affirmative defenses.'" *Id*. (quoting *Trans World Airlines, Inc. v. Thurston*, 469 U.S. 11, 122 (1985)). The Court cited the "familiar principle that 'when a proviso . . . carves out an exception out of the

body of a statute or contract ***those who set up such an exception must prove it***.'" *Meacham*, 554 U.S. at 91 (quoting *Javierre v. Central Altagracia*, 217 U.S. 502, 508 (1910) (emphasis added)).

In Title III, Congress listed the prohibited acts in its definition of trafficking:

> As used in subchapter III, and except as provided in subparagraph (B), a person 'traffics' in confiscated property if that person knowingly and intentionally—
>
> (i) Sells, transfers, distributes, dispenses, brokers, manages, or otherwise disposes of confiscated property, or purchases, leases, receives, possesses, obtains control of, manages, uses, or otherwise acquires or holds an interest in confiscated property,
> (ii) engages in a commercial activity using or otherwise benefiting from confiscated property, or
> (iii) causes, directs, participates in, or profits from, trafficking (as described in clause (i) or (ii)) by another person, or otherwise engages in trafficking (as described in clause (i) or (ii)) through another person,
>
> without the authorization of any United States national who holds a claim to the property.

22 U.S.C. § 6023(13)(A). Congress then set forth an exception for a discrete, limited class of lawful conduct which, but for the Exception, would be prohibited by Section 6023(13)(A):

> (i) the delivery of international telecommunication signals to Cuba;
> (ii) the trading or holding of securities publicly traded or held, unless the trading is with or by a person determined by the Secretary of the Treasury to be a specially designated national;
> (iii) transactions and uses of property incident to lawful travel to Cuba, to the extent that such transactions and uses of property are necessary to the conduct of such travel; or
> (iv) transactions and uses of property by a person who is both a citizen of Cuba and a resident of Cuba, and who is not an official of the Cuban Government or the ruling political party in Cuba.

22 U.S.C. § 6023(13)(B). As Judge King recently held, "[b]y using the phrase 'except as provided in subparagraph (B)' immediately before describing the conduct that constitutes trafficking, Congress expressed a clear intent to make the travel provision an *exception* to unlawful trafficking." *Garcia-Bengochea*, Case No. 19-cv-21725-JLK at ECF No. 41, 6-7.

Just as in *Osorio* and *Meacham*, Section 6023(13)(B) "exempt[s] otherwise illegal conduct by reference to a further item of proof" (i.e., provides an affirmative defense), and "the burden of persuasion falls on the one who claims its benefits." *Meacham*, 554 U.S. at 93. The Exception is an affirmative defense that plaintiffs were not required to negate, and defendants' contrary theories should be rejected out of hand.

C. *Even If the Incident to Lawful Travel Exception Were Not an Affirmative Defense (It Is), and Even If it Could Be Raised on a Motion to Dismiss (It Can't), Defendants' Trafficking Is Not "Necessary to the Conduct Of [Lawful] Travel"*

Defendants proclaim that there cannot "be any question that offering hotel lodging in Cuba is both 'incident to' and 'necessary to the conduct of' such lawful travel." Expedia MTD at 18; Booking MTD at 20. Nonsense. The plain meaning of "incident to" is "necessitated by" or "required by," in the sense that you can't have one without the other. Even if the Exception were not an affirmative defense that cannot be resolved on a motion to dismiss, it would remain indisputable that ***traveling to Cuba does not necessitate or require staying in a hotel, let alone booking a hotel room on defendants' websites***.[18] This is doubtless why Congress added the necessity requirement, even though careful congressional drafting has not prevented defendants from arguing that necessity somehow means mere convenience.

In support of their theory, defendants cite *Fish v. Kobach*, 840 F.3d 710 (10th Cir. 2016), *Nat. Res. Def. Council, Inc. v. Thomas*, 838 F.2d 1224, 1236 (D.C. Cir. 1988), and *M'Culloch v. Maryland*, 17 U.S. 316, 413 (1819), cherry picking language that supposedly supports their position. Here is what *Fish* actually says:

> We do recognize that some dictionaries define the term "necessary," at least among other ways, in this rigorous sense. *See, e.g.*, Webster's, *supra*, at 1510-11 (in defining the term "necessary," stating "that must be by reason of the nature of the thing . . . that cannot be done without: that must be done or had: absolutely required: essential, indispensable"). However, dictionaries also recognize that in common parlance "necessary" can mean something less. *See, e.g.*, *Necessary*, Black's Law Dictionary, *supra* ("1. That is needed for some purpose or reason."); The New Oxford American Dictionary, *supra*, at 1135 (observing in a usage note that "Necessary applies to something without which a condition cannot be fulfilled . . . although it generally implies a pressing need rather than absolute indispensability").

[18] Incident to" and "incident" are defined as "closely related to; resulting from; likely to happen because of," or "[l]ikely to happen because of; resulting from," as in "the changes incident to economic development" and "[i]t is true if and only if the first argument is incident to the second." *Incident to*, Translegal, https://www.translegal.com/legal-english-dictionary/incident-to (last visited Apr. 30, 2020); *Incident*, Lexico, https://www.lexico.com/en/definition/incident (last visited Apr. 30, 2020). To illustrate, we note that office holders necessarily enjoy the emoluments of office, and those in lawful possession of real property necessarily possess a right to quiet enjoyment. These are situations where B is incident to A because possessing A necessarily means that one possesses B.

Fish, 840 F.3d at 734. Thus, contrary to defendants' assertions, "necessary" does not mean merely "useful" or "convenient." *See* Expedia MTD at 18; Booking MTD at 20. The case they travel on says it means "indispensable" or "essential," but sometimes it can mean "a pressing need rather than absolute indispensability." *Fish*, 840 F.3d at 734. Under no circumstances could it ever be held ***as a matter of law*** that necessity means mere convenience, which is what the Motion demands, and prematurely at that, because the Exception is an affirmative defense. As we shall see, Title III is a statute where the word "necessary" was not intended to, and does not, mean anything less than something that "by reason of the nature of the thing . . . cannot be done without: that must be done or had: absolutely required: essential, indispensable." *See id*. (quoting WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 1510-11 (1961)).

The OFAC regulations defendants rely on to argue that their trafficking is "incident to lawful travel" are exceptions to a general proscription on trade and economic activity with Cuba—the Embargo. Congress made clear in the Act that the Embargo was to persist and be strengthened. *See* 22 U.S.C. § 6032(c) ("The President shall instruct the Secretary of the Treasury and the Attorney General to enforce fully the Cuban Assets Control Regulations set forth in part 515 of title 31, Code of Federal Regulations."); 22 U.S.C. § 6032(c) ("The economic embargo of Cuba . . . including all restrictions under part 515 of title 31, Code of Federal Regulations, shall be in effect on March 12, 1996, and shall remain in effect, subject to section 6064 of this title."); 22 U.S.C. § 6031(2) ("[T]he President should advocate, and should instruct the United States Permanent Representative to the United Nations to propose and seek within the Security Council, a mandatory international embargo against the totalitarian Cuban Government pursuant to chapter VII of the Charter of the United Nations . . . .").

Thus, courts must construe the "necessary to the conduct of such travel" language of 22 U.S.C. § 6023(13)(B)(iii) in a way that gives effect to the other provisions of the Act, quoted above, which require strict enforcement of the Embargo. *See In re Coffman*, 766 F.3d 1246, 1250 (11th Cir. 2014) (applying the canon that related statutes read *in para materia* "are to be interpreted together, as though they were one law"). Thus, there is little doubt that in using the word "necessary," Congress meant it in the "rigorous sense," i.e., something that "by reason of the nature of the thing . . . cannot be done without: that must be done or had: absolutely required: essential, indispensable." *Fish*, 840 F.3d at 734 (quoting WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 1510-11 (1961)). Reading the Act as a whole makes clear that Congress did not

mean merely useful or convenient when it said necessary.[19] Finally, there is no doubt that this argument is not ripe, because the Exception is an affirmative defense.

To illuminate the issue when it does become ripe, we note that the overarching purpose of the Act, and the necessary conclusion that the word "necessary" in Title III is meant in the "rigorous sense," together demonstrate that defendants' trafficking is not "necessary to the conduct of [lawful] travel." 22 U.S.C. § 6023(13)(B)(iii). One wishing to stay at the Resorts can (1) call the Resorts and arrange it, (2) book it on the Starfish Resorts or Memories Resorts websites, (3) go to the Resorts and book the stay in person, or (4) book it through a travel agent. Absent defendants' trafficking, persons wishing to stay at the Resorts would have many other ways to arrange it. As a matter of logic, then, defendants' trafficking simply cannot be held "necessary to the conduct of [lawful] travel" under 22 U.S.C. § 6023(13)(B)(iii).[20] Thus, even if the Exception were not an affirmative defense (it is), and even if it were appropriate to raise at this point in the proceeding (it isn't), defendants' trafficking is not "necessary to the conduct of [lawful] travel," and does not implicate the Exception. For this additional reason, the Court should deny the Motion.

D. *Even If the Exception Could Allow Defendants to Provide Online Booking Services (It Cannot), Whether Defendants Complied with OFAC Requirements is a Question of Fact That Cannot Be Resolved at This Stage of the Case*

Even if the Exception were not an affirmative defense and could properly be raised on a motion to dismiss, and even if the definition of the Exception somehow could be wrapped around defendants' trafficking in the abstract, their Motion still would require denial. Defendants violated their OFAC license every hour of every day, by selling room reservations to tourists, which is expressly prohibited by the regulations that authorize their license. *See* 31 C.F.R. §

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[19] Defendants rely on the Act's Committee Report's "paraphrasing" of the Exception as "any activities related to lawful travel to Cuba." Expedia MTD at 18; Booking MTD at 20. The Eleventh Circuit has stated that in interpreting *ambiguous* text in a statute (which this is not), the statute's committee report is, "next to the statute itself [,] the most persuasive evidence of congressional intent." *RJR Nabisco, Inc. v. United States*, 955 F.2d 1457, 1462 (11th Cir. 1992). But a committee report's inartful and informal paraphrasing of a statutory provision cannot override the *actual language* of the statute. If Congress had wanted to exempt all activities "related to lawful travel to Cuba," it would have said so. It didn't.

[20] Booking a stay at the Resorts or staying there is not "necessary to the conduct of [lawful] travel," and defendants have not attempted to argue that it is. Travelers to Cuba can choose from a wide range of accommodations, including private homes and other properties. It cannot be said that in order to travel to Cuba, it is necessary for one to stay at any hotel, including the Resorts.

515.560(f) ("***Nothing in this section authorizes transactions in connection with tourist travel to Cuba***.") (emphasis added). The Resorts are all-inclusive beach vacation resorts designed for, and catering to, tourists. Virtually all of defendants' trafficking involved "tourist travel," which vitiates their attempt to invoke the lawful travel Exception as a matter of law. But even if this were not so, the question whether defendants' trafficking was incident and necessary to lawful travel would remain a fact-bound inquiry incapable of resolution on a motion to dismiss.

On this motion to dismiss, the "court's review . . . is limited to the four corners of the complaint." *Wilchombe v. TeeVee Toons, Inc.*, 555 F.3d 949, 959 (11th Cir. 2009). Extrinsic evidence may not be considered. *Morrison v. Amway Corp.*, 323 F.3d 920, 924 (11th Cir. 2003). A court must accept all factual allegations in the complaint as true and take them in the light most favorable to plaintiff. *E.g., Dusek*, 832 F.3d at 1246. An affirmative defense cannot be considered on a motion to dismiss unless "the complaint affirmatively and clearly shows the conclusive applicability of the defense to bar the action." *Scott v. Merchants Ass'n Collection Div., Inc.*, 2012 WL 4896175, at *2 (S.D. Fla. 2012) (quoting *Jackson v. Bellsouth Telecomms.*, 372 F.3d 1250, 1274-75 (11th Cir. 2004) (internal quotes omitted)).

The Exception is an affirmative defense that defendants must plead and prove, and it may not be considered on this Motion unless it can bar this case as a matter of law, which it cannot. Nonetheless, defendants argue that merely because they had a general license from OFAC to provide travel services, all of their activities have been "incident to lawful travel" and this case should be dismissed. As a threshold matter, the licenses defendants rely on are unlawful and invalid. 31 C.F.R. § 515.101 provides that "no license or authorization contained in or issued pursuant to this part shall be deemed to authorize any transaction prohibited by any law other than the Trading With the Enemy Act, 50 U.S.C. App. § 5(b), as amended, the Foreign Assistance Act of 1961, 22 U.S.C. § 2370, or any proclamation, order, regulation or license issued pursuant thereto." The licenses defendants rely on, which purport to authorize transactions (defendants' trafficking) that are prohibited by a federal statute (Title III), are thus invalid and ineffective.

But even if that were not the case, the Expedia Entities' contention that all their activities have been "incident to lawful travel" is demonstrably false, because Expedia admittedly violated its OFAC license at least 2,221 times and in June 2019 paid $325,406 to OFAC in settlement. *See Enforcement Information for June 13, 2019*, https://www.treasury.gov/resource-center/sanctions/CivPen/Documents/20190612_expedia.pdf (last visited on Apr. 30, 2020). And

with respect to the Booking Entities, although plaintiffs have not yet discovered OFAC violations, one thing remains clear—the Booking Entities have booked stays ***for tourists*** at the Resorts, and intend to keep doing so, in violation of OFAC regulations.

Although OFAC did issue defendants purported general licenses to provide travel services under 31 C.F.R. § 515.572(a)(1), those licenses, even if they had been valid, were subject to stringent restrictions and conditions that defendants violated every hour of every day. Travel to Cuba by persons subject to U.S. jurisdiction is only permitted for twelve specific purposes:

> The travel-related transactions listed in paragraph (c) of this section may be authorized by either a general license or on a case-by-case basis by a specific license for travel related to the following activities . . . :
>
> (1) Family visits:
> (2) Official business of the U.S. government, foreign governments, and certain intergovernmental organizations;
> (3) Journalistic activity;
> (4) Professional research and professional meetings;
> (5) Educational activities;
> (6) Religious activities;
> (7) Public performances, clinics, workshops, athletic and other competitions, and exhibitions;
> (8) Support for the Cuban people;
> (9) Humanitarian projects;
> (10) Activities of private foundations or research or educational institutes;
> (11) Exportation, importation, or transmission or information or informational materials; and
> (12) Certain export transactions that may be considered for authorization under existing Department of Commerce regulations and guidelines with respect to Cuba or engaged in by U.S.-owned or -controlled foreign firms.

31 C.F.R. § 515.560(a). OFAC could not have been clearer in stating that tourist travel is unlawful and outside the scope of defendants' licenses. 31 C.F.R. § 515.560(f) ("***Nothing in this section authorizes transactions in connection with tourist travel to Cuba***.") (emphasis added). Discovery will confirm that ***virtually all*** of defendants' trafficking involved "tourist travel to Cuba." In short, ***defendants never have been engaged in trafficking that could be held incident and necessary to lawful travel, because they always have been booking rooms for tourists***.

Further, anyone that provides travel services purportedly authorized by OFAC in Section 515.572 is required to keep detailed records of all such transactions:

> (b) Required reports and recordkeeping.

> (1) Persons subject to U.S. jurisdiction providing services authorized pursuant to paragraphs (a)(1) through (a)(4) of this section must retain for at least five years from the date of the transaction a certification from each customer indicating the section of this part that authorizes the person to travel or send remittances to Cuba. In the case of a customer traveling under a specific license, the specific license number or a copy of the license must be maintained on file with the person subject to U.S. jurisdiction providing services authorized pursuant to this section.
>
> (2) The names and addresses of individual travelers or remitters, the number and amount of each remittance, and the name and address of each recipient, as applicable, must be retained on file with all other information required by § 501.601 of this chapter. These records must be furnished to the Office of Foreign Assets Control on demand pursuant to § 501.602 of this chapter.

31 C.F.R. § 515.572(b).

If defendants wish to invoke the affirmative defense of the Exception, they will have to plead and prove that they complied with each and every requirement, condition, and limitation incident to (that is, necessitated by) their OFAC license. This, defendants never will be able to do, because of their daily sale of room reservations to tourists, as well as 2,221 licensing violations for which Expedia was fined. But even if defendants never had sold room reservations to tourists and never had violated their licenses, any attempt to prove this affirmative defense would involve a fact-intensive inquiry requiring significant discovery that could not occur at this stage of the case. This is yet another reason why defendants' Motions should be denied.

E. *Plaintiffs Adequately Alleged That Defendants' Trafficking Was "Knowing and Intentional"*

Defendants argue that plaintiffs failed to adequately allege that their trafficking was "knowing and intentional," as if Title III claims required bad intent. Expedia MTD at 14-15; Booking MTD at 16-17. They do not. We noted above that this is a strict liability cause of action with limited statutory defenses. It does not require bad intent or any improper mental state. It merely requires that a trafficker have not trafficked accidentally or unintentionally, in other words, that the trafficker acted volitionally or "on purpose." The complaint adequately alleged that defendants did just that.

First, the complaint repeatedly alleged that defendants have trafficked in the Properties. *See, e.g.*, Am. Comp.at 3 "The Plaintiff Heirs now sue to right the defendants' unlawful trafficking in their property . . . ."); *id.* ¶ 1 ("The Plaintiff Heirs, on behalf of themselves and a class of similarly-situated persons, sue the Expedia and Booking.com Entities under the Cuban Liberty and Democratic Solidarity Act, 22 U.S.C. § 6021, *et seq.* (the "LIBERTAD Act"), for

unlawful trafficking in their confiscated property in Cuba."); *id.* ¶ 40 ("Since its confiscation, and as of the time of filing this lawsuit, Mario Del Valle Sr., and subsequently the Del Valle Heir, have been rightful owners of the claim to the Del Valle Property which is being trafficked by Blue Diamond, and the Expedia and Booking.com Entities."); *id.* ¶ 41 ("Since its confiscation, and as of the time of filing this lawsuit, Laureano Falla Falla and Eugenio Crabb, and subsequently the Falla Heir, have been rightful owners of the claim to the Falla Property which is being trafficked by Blue Diamond, and the Expedia and Booking.com Entities."); *id.* ¶ 42 ("Since its confiscation, and as of the time of filing this lawsuit, Carmen Muniz, and subsequently the Muniz Heir, have been rightful owners of the claim to the Muniz Property which is being trafficked by Blue Diamond, and the Expedia and Booking.com Entities."); *id.* ¶ 43 ("The Plaintiff Heirs never have given permission to defendants or anyone else to traffic in their Properties, and the defendants never have paid—nor have the Plaintiff Heirs ever received—any compensation for defendants' trafficking in the Properties."); *id.* ¶ 88 ("Defendants Expedia and Booking.com Entities have knowingly and intentionally used or benefitted, directly or indirectly, from the confiscated properties by offering, for economic benefit, reservations at the Trafficked Hotels, which constitutes trafficking that violates Title III of the LIBERTAD ACT."); *id.* ¶ 90 ("The Plaintiff Heirs, in compliance with 22 U.S.C. §§ 6082 (a)(3)(B) and (a)(3)(D), provided notice to Expedia, Hotels.com L.P., Hotels.com GP, Orbitz, Booking.com, and Booking Holdings more than 30 days before joining those entities as defendants in this action. Notwithstanding this notice, those entities continue to traffic in the Cuatro Palmas and Memories Jibacoa.").

Second, Title III defines trafficking as something that occurs when a person:

> knowingly and intentionally—
>
> (iv) Sells, transfers, distributes, dispenses, brokers, manages, or otherwise disposes of confiscated property, or purchases, leases, receives, possesses, obtains control of, manages, uses, or otherwise acquires or holds an interest in confiscated property,
>
> (v) engages in a commercial activity using or otherwise benefiting from confiscated property, or
>
> (vi) causes, directs, participates in, or profits from, trafficking (as described in clause (i) or (ii)) by another person, or otherwise engages in trafficking (as described in clause (i) or (ii)) through another person,
>
> without the authorization of any United States national who holds a claim to the property.

22 U.S.C. § 6023(13)(A). The "knowing and intentional" language is part of the definition of "trafficking." Thus, when the complaint alleged that defendants have "trafficked in the Resort, as that term is defined in 22 U.S.C. § 6023(13)," it necessarily alleged that defendants' trafficking was "knowing and intentional." In addition, plaintiffs expressly alleged that defendants' trafficking was knowing and intentional. Am. Comp. ¶ 43 ("The Plaintiff Heirs never have given permission to defendants or anyone else to traffic in their Properties, and the defendants never have paid—nor have the Plaintiff Heirs ever received—any compensation for defendants' trafficking in the Properties."); *id*. ¶ 44 ("On August 6, 2019, the Expedia and Booking.com Entities received notice from the plaintiffs informing them of plaintiffs' intent to commence an action, on plaintiffs' behalf and on behalf of those similarly situated, unless the Expedia and Booking.com Entities ceased to traffic on plaintiffs' properties . . . Despite being on actual notice, the Expedia and Booking.com Entities knowingly and intentionally continued to promote the Trafficked Hotels in their websites for their economic benefit.").

Third, defendants were on express notice since 1996 that they faced "the prospect of lawsuits and significant liability" for their trafficking, which would be "established irreversibly during the suspension period" of Title III:

> I have decided to use the authority provided by Congress to maximize Title III's effectiveness in encouraging our allies to work with us to promote democracy in Cuba. I will allow Title III to come into force. ***As a result, all companies doing business in Cuba are hereby on notice that by trafficking in expropriated American property, they face the prospect of lawsuits and significant liability in the United States.***
>
> * * *
>
> Our allies and friends will have a strong incentive to make real progress because, ***with Title III in effect, liability will be established irreversibly during the suspension period and suits could be brought immediately when the suspension is lifted***. And for that very same reason, foreign companies will have a strong incentive to immediately cease trafficking in expropriated property, the only sure way to avoid future lawsuits.

President's Statement on Action on Title III of the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1995, 32 Weekly Comp. Pres. Doc. 1265 (July 16, 1996) (G.P.O. authenticated version available at www.govinfo.gov/content/pkg/WCPD-1996-07-22/pdf/WCPD-1996-07-22-Pg1265.pdf), attached as **Exhibit B** (emphasis added). President Clinton's statement rendered defendants' conduct knowing and intentional as a matter of law.

Fourth, the complaint alleged, and defendants have admitted, that plaintiffs provided the notice letters[21] attached as **Composite Exhibit A** on August 7, 2019, which expressly notified defendants that they were about to be sued for trafficking. The complaint alleges, and defendants admit, that they continued to traffic after receiving notice, which alone would dispose of defendants' "intent" argument, even if Title III required more than merely volitional conduct (it doesn't). *See* Am. Comp. ¶ 44. In sum, the complaint adequately alleged that defendants' conduct was knowing and intentional.

CONCLUSION

For all the good and sufficient reasons set forth above, the Court should deny defendants' Motions to Dismiss.

Dated: May 1, 2020

Respectfully submitted,

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CARLOS A. RODRIGUEZ
Florida Bar No. 0091616

[21] The Notices informed defendants that Mr. Del Valle and Mr. Falla, "the rightful owner[s] of property located in Varadero, intend[] to sue [defendants] because [they have] trafficked in the property . . . ," and further notified them that plaintiffs intended to "commence a class action" against them, because "[defendants] actively solicited persons to book reservations at the hotels built on the Property, ***and other properties owned by class members.***" *See* Notices, attached as **Composite Exhibit A** (emphasis added). Consequently, the Notices are applicable to not only the claims of plaintiffs, but the claims of all class members.

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By: /s/ Manuel Vazquez
MANUEL VAZQUEZ
Florida Bar No. 132826

CERTIFICATE OF SERVICE

I certify that on May 1, 2020, I electronically filed this document with the Clerk of the Court using CM/ECF. I also certify that this document is being served today on all counsel of record by transmission of Notices of Electronic Filing generated by CM/ECF.

By: /s/ Andrés Rivero
ANDRÉS RIVERO

COMPOSITE

EXHIBIT

A

RIVERO MESTRE

August 6, 2019

Booking Holdings, Inc.
ATTN: Legal Department
800 Connecticut Avenue
Norwalk, Connecticut 06854

Re: Notice of Intent to Commence Action Against Booking Holdings, Inc., under 22 U.S.C. § 6082

To Whom it May Concern:

This firm represents Mario Del Valle, Enrique Falla, and Mario Echevarria (collectively, the "Owners"). In accordance with 22 U.S.C. § 6082(a)(3), this letter serves as notice of the Owners' intent to commence a class action against Booking Holdings, Inc. ("BHI") under 22 U.S.C. § 6082.

Mr. Del Valle, the rightful owner of property located in Varadero, intends to sue BHI because it has trafficked in the property, as those terms are defined in 22 U.S.C. § 6023, confiscated by the Cuban government from the Del Valle family. Mr. Echevarria and the Echevarria family, the rightful owners of Cayo Coco, Cuba, intend to sue BHI because it has trafficked in property, as those terms are defined in 22 U.S.C. § 6023, confiscated by the Cuban government from the Echevarria family. Finally, Mr. Falla, the rightful owner of property located in Varadero, intends to sue BHI because it has trafficked in the property, as those terms are defined in 22 U.S.C. § 6023, confiscated by the Cuban government from the Falla family.

Expedia has benefited, and continues to benefit, from the Owners' property in Cuba (the "Property"). Specifically, BHI actively solicited persons to book reservations at hotels built on the Property, and other properties owned by class members, on its website and ultimately profited from those reservations. The Owners intend to bring a class action on behalf of all persons similarly situated.

Mr. Del Valle, Mr. Falla, and Mr. Echevarria hereby demand that BHI cease trafficking in their Property, and that of the class, immediately and compensate them as provided in 22 U.S.C. § 6082(a).

Very truly yours,

Andrés Rivero
For the Firm

Rivero Mestre LLP
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text, or, at a minimum, an outline of comments they proposed to make orally. Such comments will be limited to ten minutes in length. Any interested person also may file a written statement for consideration by the Joint Board and Committee by sending it to the Committee Management Officer. Notifications and statements should be mailed no later than June 19, 1996, to Mr. Robert I. Brauer, Joint Board for the Enrollment of Actuaries, c/o Office of Director of Practice, Internal Revenue Service, Suite 600, 801 Pennsylvania Avenue, NW, Washington, DC 20004 or by facsimile transmission to 202–376–1420.

Dated: May 9, 1996.

Robert I. Brauer,

Advisory Committee Management Officer, Joint Board for the Enrollment of Actuaries.

[FR Doc. 96–12491 Filed 5–16–96; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF JUSTICE

[AG Order No. 2029–96]

Summary of the Provisions of Title III of the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996

AGENCY: Department of Justice.

ACTION: Notice.

SUMMARY: In accordance with the requirement of section 302(a)(8) of the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996, The United States Department of Justice is publishing this notice summarizing the provisions of Title III of the Act. Title III makes persons who knowingly and intentionally "traffic" in confiscated properties, as defined in the Act, subject to private civil damage suits in Federal district court.

EFFECTIVE DATE: This notice is effective May 17, 1996.

FOR FURTHER INFORMATION CONTACT: David E. Bradley, Chief Counsel, Foreign Claims Settlement Commission, Department of Justice, Washington DC 20579, (202) 616–6975.

SUPPLEMENTARY INFORMATION: On March 12, 1996, President Clinton signed into law the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996, P.L. 104–114 (also known as the "Helms-Burton Act"). Title III of the Act discourages foreign investment in properties that were expropriated by the Cuban Government on or after January 1, 1959, without compensation, from persons who are now Untied States nationals. Title III makes persons who knowingly and intentionally "traffic" in such confiscated properties subject to private civil damage suits in Federal district court.

The Act defines "trafficking" broadly, with several exceptions, as set forth below. A trafficker may be liable to the U.S. claimant for the value of the claim, plus interest, reasonable attorney's fees and court costs. In addition, under certain circumstances described below, a person who trafficks in U.S. claimed property may be liable to the claimant for triple the amount of the value of the claim, excluding interest, fees and court costs.

Title III is scheduled to take effect on August 1, 1996. However, the law does not immediately permit U.S. claimants to bring suit to recover from traffickers. First, traffickers will have a three month "grace period" beginning on the effective date during which they may dispose of their interest in the claimed property and avoid liability under Title III. Under the scheduled effective date, therefore, traffickers who dispose of their interests in confiscated property before November 1, 1996, will not be subject to liability to the owner of the claim. Second, until March 13, 1998, only those persons with claims that were certified by the Foreign Claims Settlement Commission ("FCSC") may bring a Title III lawsuit. Third, the Act provides the President with the authority to suspend the effective date for six months, and for additional six month periods, if he determines suspension is necessary to the national interests of the United States and will expedite a transition to democracy in Cuba. Additional requirements and conditions are described below.

Section 302(a)(8) of the Act requires the Attorney General to publish in the Federal Register not later than sixty days after enactment "a concise summary of the provisions of this title, including a statement of the liability under this title of a person trafficking in confiscated property, and the remedies available to United States nationals under this title." This notice and the accompanying Summary of the provisions of Title III fulfill the Attorney General's obligations under this section. The Department has coordinated the issuance of this Summary with the Department of State.

Interested persons should refer to the text of the Act itself or consult a private attorney for further information and clarification.

For the reasons set forth in the preamble, and by the authority vested in me as Attorney general, I hereby issue the following Summary of the Provisions of Title III of the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996:

Summary of the Provisions of Title III of the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996

1. Liability Under Title III

(a) Under section 302(a)(1) of Title III of the Cuban Liberty and Democratic Solidarity (LIBERTAF) Act of 1996 (hereinafter "Title III") subject to certain requirements, conditions, and possible suspensions, a United States national with a claim to property expropriated by the Government of Cuba on or after January 1, 1959, may bring a private lawsuit in U.S. federal district court against a person who trafficks in that property beginning three months after Title III's effective date. The scheduled effective date is August 1, 1996, subject to the President's authority to suspend Title III.

(b) Section 4(13) of the Act defines a trafficker as a person who knowingly and intentionally:

(i) Sells, transfers, distributes, dispenses, brokers, manages, or otherwise disposes of confiscated property, or purchases, leases, receives, possesses, obtains control of, manages, uses, or otherwise acquires or holds an interest in confiscated property;

(ii) Engages in a commercial activity using or otherwise benefiting from confiscated property; or

(iii) Causes, directs, participates in, or profits from trafficking by another person, or otherwise engages in trafficking through another person, without the authorization of any United States national who holds a claim to the property.

(c) Trafficking under section 4(13) does not include:

(i) The delivery of international telecommunication signals to Cuba;

(ii) The trading or holding of securities publicly traded or held, unless the trading is with or by a person determined by the Secretary of the Treasury to be a specially designated national;

(iii) Transactions and uses of property incident to lawful travel to Cuba, to the extent that such transactions and uses of property are necessary to the conduct of such travel; or

(iv) Transactions and uses of property by a person who is both a citizen and a resident of Cuba, and who is not an official of the Cuban Government or the ruling political party in Cuba.

(d) Section 4(11) defines "person" for purposes of the Libertad Act as any person or entity, including any agency or instrumentality of a foreign state.

(e) For purposes of Title III, "United States national" is defined under

section 4(15) to mean (i) any United States citizen, or (ii) any other legal entity which is organized under the laws of the United States, or of any state, the District of Columbia, or any commonwealth, territory, or possession of the United States, and which has its principal place of business in the United States.

2. Remedies Available Under Title III

(a) Section 302(a)(1)(A) provides that, in addition to attorney's fees and court costs, a trafficker will be liable for money damages to the U.S. national who owns the claim to property being trafficked in the greater of the following amounts:

(i) The amount certified by the Foreign Claims Settlement Commission ("FCSC") plus interest;

(ii) If the claim has not been certified by the FCSC, the amount determined by the court in the course of a Title III action, plus interest; or

(iii) The fair market value of the property calculated according to either the current value of the property or the value of the property when confiscated plus interest, whichever is greater.

Interest is to be calculated from the date of confiscation of the property involved to the date on which the action is brought.

(b) Section 302(a)(2) establishes a presumption that the amount for which a person is liable to a U.S. national owning a claim certified by the FCSC is the amount so certified. This presumption will be rebuttable by clear and convincing evidence that one of the other measures of liability under section 302(a)(1)(A) is appropriate.

(c) Under section 302(a)(3), a person who trafficks in property which either serves as the basis for a claim certified by the FCSC or is the subject of written notice at least thirty days before the initiation of an action will be subject to treble damages. Such person's liability, in addition to court costs and reasonable attorney's fees, will thus be triple the amount determined under section 302(a)(1)(A). The notice required under section 302(a)(3) must be in writing and be posted by certified mail or personally delivered. It must contain a statement of intention to commence a Title III action or to join the person as a defendant, the reasons for such action, a demand that the trafficking cease immediately, and a copy of this summary.

(d) Under section 302(a)(7), a Title III action may be settled and a judgment enforced without obtaining any license or permission of an agency of the U.S. Government. This section does not apply to assets blocked pursuant to authorities under section 5(b) of the Trading With the Enemy Act that were being exercised on July 1, 1977. In addition, no claim against the Cuban Government will be considered a property interest the transfer of which requires a license or permission of an agency of the United States.

3. Requirements and Conditions for a Title III Action

(a) Under section 302(a)(4), if the property was confiscated before March 12, 1996, the U.S. national bringing the claim must have owned the claim before March 12, 1996. If the property was confiscated on or after March 12, 1996, a U.S. national who acquires ownership of a claim to the property after its confiscation by assignment for value may not bring a lawsuit under Title III.

(b) Under section 302(a)(5), a U.S. national who was eligible to file a claim with the FCSC but did not do so may not bring an action under this title. Where the FCSC denied a U.S. national's claim that now serves as the basis for a Title III action, the court hearing the action will accept the FCSC's findings as conclusive. A U.S. national bringing an action on the basis of a claim that was not certified by the FCSC may not file a Title III lawsuit until March 13, 1998. Any person bringing an action under Title III whose claim has not been certified by the FCSC has the burden of proving to the court that the interest in the property that is the subject of the claim is not the subject of a claim so certified.

(c) Section 302(b) establishes that, in order for an action to be brought under Title III, the amount in controversy must exceed $50,000, not including interest, costs, and attorneys fees. This amount is exclusive of the increased liability damages under section 302(a)(3).

(d) Under section 302(c), title 28 of the United States Code and the rules of court generally applicable to actions brought under section 1331 of title 28 govern the procedure to be followed in Title III actions. Service of process on an agency or instrumentality of a foreign state in the court of a commercial activity or against individuals acting under color of law shall be made in accordance with section 1608 of title 28 of the United States Code.

(e) Under section 302(d), any judgment entered under Title III shall not be enforceable against an agency or instrumentality of either a transition government in Cuba or a democratically elected government in Cuba.

(f) Section 302(e) amends section 1611 of title 28 of the United States Code by adding a new section, which states that the property of a foreign state shall be immune from attachment and from execution in an action brought under section 302 to the extent that the property is a facility or installation used by an accredited diplomatic mission for official purposes.

(g) Under section 302(f)(1), a U.S. national who brings an action under Title III may not bring any other action seeking monetary or nonmonetary compensation by reason of the same subject matter.

(h) Section 302(f)(2)(A) establishes limits on further recovery by a U.S. national with a FCSC-certified claim depending on whether such Title III action leads to a recovery of a greater, equal or lesser amount than certified by the FCSC. If the claimant's recovery under Title III is equal to or greater than the amount certified by the FCSC, the U.S. national may not recover any payment on the claim under any claims settlement agreement between the United States and Cuba. If the U.S. national in a Title III action recovers less than the amount certified by the FCSC, the U.S. national may only receive payment in any claims settlement agreement between the United States and Cuba to the extent of the difference between the certified claim and the recovery. If there is no recovery, the U.S. national may still receive payment in a claims settlement agreement between the United States and Cuba and will be treated as any other certified claimant who does not bring an action under Title III.

(i) Section 302(f)(2)(B) provides that in the event some or all Title III actions are consolidated by judicial or other action so as to create a pool of assets available to satisfy such claims, FCSC-certified claims will be entitled to payment in full from such pool before any payment is made from such pool with respect to any claim not so certified.

(j) Under section 302(g), if the United States and the Government of Cuba reach a claims settlement agreement settling FCSC-certified claims, any amount paid by Cuba in such an agreement in excess of the payments made under section 302(f)(2) shall be deposited in the U.S. Treasury.

(k) Under section 302(h), the rights created pursuant to Title III may be suspended upon a presidential determination under section 203 that a transition government in Cuba is in place and may be terminated upon a presidential determination that a democratically elected government in Cuba is in power. Neither of these actions shall affect suits commenced before the dates of suspension or termination. While pending suits may proceed to judgment, such judgments

will not be enforceable against a transition or democratically elected government in Cuba under section 302(d).

(l) Claimants bringing an action under Title III will be required to pay a uniform filing fee, to be established by the Judicial Conference of the United States, pursuant to section 302(i).

(m) Section 302(a)(6) provides that no court of the United States shall decline, based upon the act of state doctrine, to make a determination on the merits in an action brought under Title III.

(n) Section 305 provides that actions under section 302 may not be brought more than two years after the trafficking giving rise to the action has ceased to occur.

4. Proof of Ownership of a Claim to Confiscated Property

(a) Section 303(a) provides that certification of a claim by the FCSC is conclusive proof of ownership. In all other cases, the court has the discretion to appoint a special master, including the FCSC, to make determinations of the amount and ownership of the claim. Determinations made by administrative agencies or courts of a foreign government or international organization shall not be conclusive unless made pursuant to binding international arbitration to which the United States or the claimant submitted the claim.

(b) Section 303(b) amends the International Claims Settlement Act of 1949 by authorizing a U.S. district court to refer to the FCSC factual questions under Title III involving the amount and ownership by a U.S. national of a claim to confiscated property in Cuba.

5. Consistency With International Claims Practice

(a) Section 303(c) emphasizes that nothing in the LIBERTAD Act shall be construed to require or otherwise authorize the claims of Cuban nationals who became U.S. citizens after their property was confiscated to be included in a future negotiation and espousal of U.S. claims with a friendly government in Cuba when diplomatic relations are restored. Section 303(c) also states that the LIBERTAD Act shall not be construed as superseding, amending, or otherwise altering certifications that have been made under the FCSC's Cuba Claims Program.

(b) Section 304 amends the International Claims Settlement Act of 1949 to state that no person other than a certified claimant shall have a claim to, participate in, or otherwise have an interest in the compensation proceeds paid to a U.S. national by virtue of a certified claim.

6. Presidential Suspension Authority

(a) Section 306(a) provides that, subject to the President's suspension authority, Title III takes effect on August 1, 1996.

(b) Section 306(b) provides the President with the authority to suspend the effective date of Title III beyond August 1, 1996, for up to six months, and for additional extensions up to six months, upon a determination and report to the appropriate congressional committees that a suspension is necessary to the national interests of the United States and will expedite a transition to democracy in Cuba. An initial determination and report must be submitted to the appropriate congressional committees at least 15 days before August 1, 1996. Additional suspensions or extensions are subject to the same reporting and determination requirements.

(c) Section 306(c) provides the President with the authority to suspend the right to bring an action under Title III after its effective date for up to six months, and for additional extensions up to six months, upon a determination and report that a suspension is necessary to the national interests of the United States and will expedite a transition to democracy in Cuba. Section 306(c) also emphasizes that after the effective date no persons may acquire a property interest in any potential or pending Title III action, nor shall pending actions commenced before the date of suspension be affected by a suspension.

(d) Section 306(d) provides that the President may rescind any suspension made under section 306(b) or section 306(c) upon reporting to the appropriate congressional committees that doing so will expedite a transition to democracy in Cuba.

Dated: May 11, 1996.

Janet Reno,

Attorney General.

[FR Doc. 96–12407 Filed 5–16–96; 8:45 am]

BILLING CODE 4410–01–M

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By notice dated August 14, 1995, and published in the Federal Register on August 22, 1995 (60 FR 43613), Ganes Chemicals, Inc., Industrial Park Road, Pennsville, New Jersey 08070, made application to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of methylphenidate.

A registered manufacturer of bulk methylphenidate filed a comment alleging that DEA's notice of application, published in the Federal Register, did not comply with notice and comment rulemaking requirements of the Administrative Procedure Act (APA). In addition, the commentor stated that Ganes' registration would be contrary to the public interest under 21 U.S.C. 823(a).

The commentor maintains that DEA "has deprived [the commentor] and other registered manufacturers and applicants of the opportunity to offer fully-informed comments on Ganes' application." In support of its position, the commentor submits that "registration of bulk manufacturers of schedule I–II controlled substances is subject to notice and comment rulemaking." For the reasons provided below, this conclusion is an incorrect interpretation of the APA. First, the commentor ignores the basic definitions set forth in the APA and, in so doing, confuses notice and comment rulemaking with agency licensing proceedings. The commentor argues that DEA proceedings to grant or deny an application for registration as a bulk manufacturer are rulemakings. However, the clear language of the definition of a "rule" exposes the error of this analysis. The APA defines "rule making" to mean an "agency process for formulating, amending, or repealing a rule." 5 U.S.C. 551(5).

The APA defines a "rule" as:

> The whole or a part of an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy or describing the organization, procedure, or practice requirements of an agency and includes the approval or prescription for the future of rates, wages, corporate or financial structures or reorganizations thereof, prices, facilities, appliances, services or allowances therefore or of valuations, costs, or accounting, or practices bearing on any of the foregoing.

5 U.S.C. 551(4).

Review of the APA's definitions of license [1] and licensing [2] reveals that the granting or denial of a manufacturer's application for registration is a licensing action, not a rulemaking. Courts have

[1] Section 551(8) of the APA defines license as "the whole or a part of an agency permit, certificate, approval, *registration*, charter, membership, statutory exemption or other form of permission." (emphasis added).

[2] Licensing is defined as "agency process respecting the grant, renewal, denial, revocation, suspension, annulment, withdrawal, limitation, amendment, modification, or conditioning of a license." 5 U.S.C. 551(9).

FedEx Shipment Receipt

Address Information

Ship to:	**Ship from:**
ATTN: Legal Department	Paula Alvarez
Booking Holdings, Inc.	
800 Connecticut Avenue	2525 Ponce De Leon Blvd.
	Suite 1000
NORWALK, CT	Coral Gables, FL
06854	33134
US	US
305-445-2500	3054452500

Shipment Information:
Tracking no.: 775917847935
Ship date: 08/06/2019
Estimated shipping charges: 42.69 USD

Package Information
Pricing option: FedEx Standard Rate
Service type: Priority Overnight
Package type: FedEx Envelope
Number of packages: 1
Total weight: 0.50 LBS
Declared Value: 0.00 USD
Special Services:
Pickup/Drop-off: Drop off package at FedEx location

Billing Information:
Bill transportation to: Rivero Mestre-495
Your reference: 1730.01 1731.01 1731.02 1732
P.O. no.:
Invoice no.:
Department no.:

Thank you for shipping online with FedEx ShipManager at fedex.com.

Please Note

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The estimated shipping charge may be different than the actual charges for your shipment. Differences may occur based on actual weight, dimensions, and other factors. Consult the applicable FedEx Service Guide or the FedEx Rate Sheets for details on how shipping charges are calculated.

775917847935

Delivered
Wednesday 8/07/2019 at 10:25 am

DELIVERED

Signed for by: C.FIARCHILD

GET STATUS UPDATES

OBTAIN PROOF OF DELIVERY

FROM	TO
Coral Gables, FL US	NORWALK, CT US

Shipment Facts

TRACKING NUMBER 775917847935	**SERVICE** FedEx Priority Overnight	**WEIGHT** 0.5 lbs / 0.23 kgs
DELIVERED TO Receptionist/Front Desk	**TOTAL PIECES** 1	**TOTAL SHIPMENT WEIGHT** 0.5 lbs / 0.23 kgs
TERMS Shipper	**SHIPPER REFERENCE** 1730.01 1731.01 1731.02 1732	**PACKAGING** FedEx Envelope
SPECIAL HANDLING SECTION Deliver Weekday	**STANDARD TRANSIT** 8/07/2019 by 10:30 am	**SHIP DATE** Tue 8/06/2019
ACTUAL DELIVERY Wed 8/07/2019 10:25 am		

Travel History

Local Scan Time

Wednesday , 8/07/2019

10:25 am	NORWALK, CT	Delivered
9:28 am	STAMFORD, CT	On FedEx vehicle for delivery
9:04 am	STAMFORD, CT	At local FedEx facility
6:01 am	JAMAICA, NY	At destination sort facility
2:43 am	MEMPHIS, TN	Departed FedEx location

Tuesday , 8/06/2019

8:15 pm	MIAMI, FL	Left FedEx origin facility
6:57 pm	MIAMI, FL	Picked up
2:16 pm		Shipment information sent to FedEx

RIVERO MESTRE

August 6, 2019

Expedia, Inc.
ATTN: Legal Department
333 108th Ave NE
Bellevue, WA 98004

Re: Notice of Intent to Commence Action Against Expedia, Inc., under 22 U.S.C. § 6082

To Whom it May Concern:

This firm represents Mario Del Valle, Enrique Falla, and Mario Echevarria (collectively, the "Owners"). In accordance with 22 U.S.C. § 6082(a)(3), this letter serves as notice of the Owners' intent to commence a class action against Expedia, Inc. ("Expedia") under 22 U.S.C. § 6082.

Mr. Del Valle, the rightful owner of property located in Varadero, intends to sue Expedia because it has trafficked in the property, as those terms are defined in 22 U.S.C. § 6023, confiscated by the Cuban government from the Del Valle family. Mr. Echevarria and the Echevarria family, the rightful owners of Cayo Coco, Cuba, intend to sue Expedia because it has trafficked in property, as those terms are defined in 22 U.S.C. § 6023, confiscated by the Cuban government from the Echevarria family. Finally, Mr. Falla, the rightful owner of property located in Varadero, intends to sue Expedia because it has trafficked in the property, as those terms are defined in 22 U.S.C. § 6023, confiscated by the Cuban government from the Falla family.

Expedia has benefited, and continues to benefit, from the Owners' property in Cuba (the "Property"). Specifically, Expedia actively solicited persons to book reservations at hotels built on the Property, and other properties owned by class members, on its website and ultimately profited from those reservations. The Owners intend to bring a class action on behalf of all persons similarly situated.

Mr. Del Valle, Mr. Falla, and Mr. Echevarria hereby demand that Expedia cease trafficking in their Property, and that of the class, immediately and compensate them as provided in 22 U.S.C. § 6082(a).

Very truly yours,

Andrés Rivero
For the Firm

Rivero Mestre LLP
www.riveromestre.com
T 305 4452500 F 305 4452505

MIA 2525 Ponce de Leon Blvd. Suite 1000 Miami, FL 33134 NYC

text, or, at a minimum, an outline of comments they proposed to make orally. Such comments will be limited to ten minutes in length. Any interested person also may file a written statement for consideration by the Joint Board and Committee by sending it to the Committee Management Officer. Notifications and statements should be mailed no later than June 19, 1996, to Mr. Robert I. Brauer, Joint Board for the Enrollment of Actuaries, c/o Office of Director of Practice, Internal Revenue Service, Suite 600, 801 Pennsylvania Avenue, NW, Washington, DC 20004 or by facsimile transmission to 202–376–1420.

Dated: May 9, 1996.

Robert I. Brauer,

Advisory Committee Management Officer, Joint Board for the Enrollment of Actuaries.

[FR Doc. 96–12491 Filed 5–16–96; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF JUSTICE

[AG Order No. 2029–96]

Summary of the Provisions of Title III of the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996

AGENCY: Department of Justice.

ACTION: Notice.

SUMMARY: In accordance with the requirement of section 302(a)(8) of the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996, The United States Department of Justice is publishing this notice summarizing the provisions of Title III of the Act. Title III makes persons who knowingly and intentionally "traffic" in confiscated properties, as defined in the Act, subject to private civil damage suits in Federal district court.

EFFECTIVE DATE: This notice is effective May 17, 1996.

FOR FURTHER INFORMATION CONTACT: David E. Bradley, Chief Counsel, Foreign Claims Settlement Commission, Department of Justice, Washington DC 20579, (202) 616–6975.

SUPPLEMENTARY INFORMATION: On March 12, 1996, President Clinton signed into law the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996, P.L. 104–114 (also known as the "Helms-Burton Act"). Title III of the Act discourages foreign investment in properties that were expropriated by the Cuban Government on or after January 1, 1959, without compensation, from persons who are now Untied States nationals. Title III makes persons who knowingly and intentionally "traffic" in such confiscated properties subject to private civil damage suits in Federal district court.

The Act defines "trafficking" broadly, with several exceptions, as set forth below. A trafficker may be liable to the U.S. claimant for the value of the claim, plus interest, reasonable attorney's fees and court costs. In addition, under certain circumstances described below, a person who trafficks in U.S. claimed property may be liable to the claimant for triple the amount of the value of the claim, excluding interest, fees and court costs.

Title III is scheduled to take effect on August 1, 1996. However, the law does not immediately permit U.S. claimants to bring suit to recover from traffickers. First, traffickers will have a three month "grace period" beginning on the effective date during which they may dispose of their interest in the claimed property and avoid liability under Title III. Under the scheduled effective date, therefore, traffickers who dispose of their interests in confiscated property before November 1, 1996, will not be subject to liability to the owner of the claim. Second, until March 13, 1998, only those persons with claims that were certified by the Foreign Claims Settlement Commission ("FCSC") may bring a Title III lawsuit. Third, the Act provides the President with the authority to suspend the effective date for six months, and for additional six month periods, if he determines suspension is necessary to the national interests of the United States and will expedite a transition to democracy in Cuba. Additional requirements and conditions are described below.

Section 302(a)(8) of the Act requires the Attorney General to publish in the Federal Register not later than sixty days after enactment "a concise summary of the provisions of this title, including a statement of the liability under this title of a person trafficking in confiscated property, and the remedies available to United States nationals under this title." This notice and the accompanying Summary of the provisions of Title III fulfill the Attorney General's obligations under this section. The Department has coordinated the issuance of this Summary with the Department of State.

Interested persons should refer to the text of the Act itself or consult a private attorney for further information and clarification.

For the reasons set forth in the preamble, and by the authority vested in me as Attorney general, I hereby issue the following Summary of the Provisions of Title III of the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996:

Summary of the Provisions of Title III of the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996

1. Liability Under Title III

(a) Under section 302(a)(1) of Title III of the Cuban Liberty and Democratic Solidarity (LIBERTAF) Act of 1996 (hereinafter "Title III") subject to certain requirements, conditions, and possible suspensions, a United States national with a claim to property expropriated by the Government of Cuba on or after January 1, 1959, may bring a private lawsuit in U.S. federal district court against a person who trafficks in that property beginning three months after Title III's effective date. The scheduled effective date is August 1, 1996, subject to the President's authority to suspend Title III.

(b) Section 4(13) of the Act defines a trafficker as a person who knowingly and intentionally:

(i) Sells, transfers, distributes, dispenses, brokers, manages, or otherwise disposes of confiscated property, or purchases, leases, receives, possesses, obtains control of, manages, uses, or otherwise acquires or holds an interest in confiscated property;

(ii) Engages in a commercial activity using or otherwise benefiting from confiscated property; or

(iii) Causes, directs, participates in, or profits from trafficking by another person, or otherwise engages in trafficking through another person, without the authorization of any United States national who holds a claim to the property.

(c) Trafficking under section 4(13) does not include:

(i) The delivery of international telecommunication signals to Cuba;

(ii) The trading or holding of securities publicly traded or held, unless the trading is with or by a person determined by the Secretary of the Treasury to be a specially designated national;

(iii) Transactions and uses of property incident to lawful travel to Cuba, to the extent that such transactions and uses of property are necessary to the conduct of such travel; or

(iv) Transactions and uses of property by a person who is both a citizen and a resident of Cuba, and who is not an official of the Cuban Government or the ruling political party in Cuba.

(d) Section 4(11) defines "person" for purposes of the Libertad Act as any person or entity, including any agency or instrumentality of a foreign state.

(e) For purposes of Title III, "United States national" is defined under

section 4(15) to mean (i) any United States citizen, or (ii) any other legal entity which is organized under the laws of the United States, or of any state, the District of Columbia, or any commonwealth, territory, or possession of the United States, and which has its principal place of business in the United States.

2. Remedies Available Under Title III

(a) Section 302(a)(1)(A) provides that, in addition to attorney's fees and court costs, a trafficker will be liable for money damages to the U.S. national who owns the claim to property being trafficked in the greater of the following amounts:

(i) The amount certified by the Foreign Claims Settlement Commission ("FCSC") plus interest;

(ii) If the claim has not been certified by the FCSC, the amount determined by the court in the course of a Title III action, plus interest; or

(iii) The fair market value of the property calculated according to either the current value of the property or the value of the property when confiscated plus interest, whichever is greater.

Interest is to be calculated from the date of confiscation of the property involved to the date on which the action is brought.

(b) Section 302(a)(2) establishes a presumption that the amount for which a person is liable to a U.S. national owning a claim certified by the FCSC is the amount so certified. This presumption will be rebuttable by clear and convincing evidence that one of the other measures of liability under section 302(a)(1)(A) is appropriate.

(c) Under section 302(a)(3), a person who trafficks in property which either serves as the basis for a claim certified by the FCSC or is the subject of written notice at least thirty days before the initiation of an action will be subject to treble damages. Such person's liability, in addition to court costs and reasonable attorney's fees, will thus be triple the amount determined under section 302(a)(1)(A). The notice required under section 302(a)(3) must be in writing and be posted by certified mail or personally delivered. It must contain a statement of intention to commence a Title III action or to join the person as a defendant, the reasons for such action, a demand that the trafficking cease immediately, and a copy of this summary.

(d) Under section 302(a)(7), a Title III action may be settled and a judgment enforced without obtaining any license or permission of an agency of the U.S. Government. This section does not apply to assets blocked pursuant to authorities under section 5(b) of the Trading With the Enemy Act that were being exercised on July 1, 1977. In addition, no claim against the Cuban Government will be considered a property interest the transfer of which requires a license or permission of an agency of the United States.

3. Requirements and Conditions for a Title III Action

(a) Under section 302(a)(4), if the property was confiscated before March 12, 1996, the U.S. national bringing the claim must have owned the claim before March 12, 1996. If the property was confiscated on or after March 12, 1996, a U.S. national who acquires ownership of a claim to the property after its confiscation by assignment for value may not bring a lawsuit under Title III.

(b) Under section 302(a)(5), a U.S. national who was eligible to file a claim with the FCSC but did not do so may not bring an action under this title. Where the FCSC denied a U.S. national's claim that now serves as the basis for a Title III action, the court hearing the action will accept the FCSC's findings as conclusive. A U.S. national bringing an action on the basis of a claim that was not certified by the FCSC may not file a Title III lawsuit until March 13, 1998. Any person bringing an action under Title III whose claim has not been certified by the FCSC has the burden of proving to the court that the interest in the property that is the subject of the claim is not the subject of a claim so certified.

(c) Section 302(b) establishes that, in order for an action to be brought under Title III, the amount in controversy must exceed $50,000, not including interest, costs, and attorneys fees. This amount is exclusive of the increased liability damages under section 302(a)(3).

(d) Under section 302(c), title 28 of the United States Code and the rules of court generally applicable to actions brought under section 1331 of title 28 govern the procedure to be followed in Title III actions. Service of process on an agency or instrumentality of a foreign state in the court of a commercial activity or against individuals acting under color of law shall be made in accordance with section 1608 of title 28 of the United States Code.

(e) Under section 302(d), any judgment entered under Title III shall not be enforceable against an agency or instrumentality of either a transition government in Cuba or a democratically elected government in Cuba.

(f) Section 302(e) amends section 1611 of title 28 of the United States Code by adding a new section, which states that the property of a foreign state shall be immune from attachment and from execution in an action brought under section 302 to the extent that the property is a facility or installation used by an accredited diplomatic mission for official purposes.

(g) Under section 302(f)(1), a U.S. national who brings an action under Title III may not bring any other action seeking monetary or nonmonetary compensation by reason of the same subject matter.

(h) Section 302(f)(2)(A) establishes limits on further recovery by a U.S. national with a FCSC-certified claim depending on whether such Title III action leads to a recovery of a greater, equal or lesser amount than certified by the FCSC. If the claimant's recovery under Title III is equal to or greater than the amount certified by the FCSC, the U.S. national may not recover any payment on the claim under any claims settlement agreement between the United States and Cuba. If the U.S. national in a Title III action recovers less than the amount certified by the FCSC, the U.S. national may only receive payment in any claims settlement agreement between the United States and Cuba to the extent of the difference between the certified claim and the recovery. If there is no recovery, the U.S. national may still receive payment in a claims settlement agreement between the United States and Cuba and will be treated as any other certified claimant who does not bring an action under Title III.

(i) Section 302(f)(2)(B) provides that in the event some or all Title III actions are consolidated by judicial or other action so as to create a pool of assets available to satisfy such claims, FCSC-certified claims will be entitled to payment in full from such pool before any payment is made from such pool with respect to any claim not so certified.

(j) Under section 302(g), if the United States and the Government of Cuba reach a claims settlement agreement settling FCSC-certified claims, any amount paid by Cuba in such an agreement in excess of the payments made under section 302(f)(2) shall be deposited in the U.S. Treasury.

(k) Under section 302(h), the rights created pursuant to Title III may be suspended upon a presidential determination under section 203 that a transition government in Cuba is in place and may be terminated upon a presidential determination that a democratically elected government in Cuba is in power. Neither of these actions shall affect suits commenced before the dates of suspension or termination. While pending suits may proceed to judgment, such judgments

will not be enforceable against a transition or democratically elected government in Cuba under section 302(d).

(l) Claimants bringing an action under Title III will be required to pay a uniform filing fee, to be established by the Judicial Conference of the United States, pursuant to section 302(i).

(m) Section 302(a)(6) provides that no court of the United States shall decline, based upon the act of state doctrine, to make a determination on the merits in an action brought under Title III.

(n) Section 305 provides that actions under section 302 may not be brought more than two years after the trafficking giving rise to the action has ceased to occur.

4. Proof of Ownership of a Claim to Confiscated Property

(a) Section 303(a) provides that certification of a claim by the FCSC is conclusive proof of ownership. In all other cases, the court has the discretion to appoint a special master, including the FCSC, to make determinations of the amount and ownership of the claim. Determinations made by administrative agencies or courts of a foreign government or international organization shall not be conclusive unless made pursuant to binding international arbitration to which the United States or the claimant submitted the claim.

(b) Section 303(b) amends the International Claims Settlement Act of 1949 by authorizing a U.S. district court to refer to the FCSC factual questions under Title III involving the amount and ownership by a U.S. national of a claim to confiscated property in Cuba.

5. Consistency With International Claims Practice

(a) Section 303(c) emphasizes that nothing in the LIBERTAD Act shall be construed to require or otherwise authorize the claims of Cuban nationals who became U.S. citizens after their property was confiscated to be included in a future negotiation and espousal of U.S. claims with a friendly government in Cuba when diplomatic relations are restored. Section 303(c) also states that the LIBERTAD Act shall not be construed as superseding, amending, or otherwise altering certifications that have been made under the FCSC's Cuba Claims Program.

(b) Section 304 amends the International Claims Settlement Act of 1949 to state that no person other than a certified claimant shall have a claim to, participate in, or otherwise have an interest in the compensation proceeds paid to a U.S. national by virtue of a certified claim.

6. Presidential Suspension Authority

(a) Section 306(a) provides that, subject to the President's suspension authority, Title III takes effect on August 1, 1996.

(b) Section 306(b) provides the President with the authority to suspend the effective date of Title III beyond August 1, 1996, for up to six months, and for additional extensions up to six months, upon a determination and report to the appropriate congressional committees that a suspension is necessary to the national interests of the United States and will expedite a transition to democracy in Cuba. An initial determination and report must be submitted to the appropriate congressional committees at least 15 days before August 1, 1996. Additional suspensions or extensions are subject to the same reporting and determination requirements.

(c) Section 306(c) provides the President with the authority to suspend the right to bring an action under Title III after its effective date for up to six months, and for additional extensions up to six months, upon a determination and report that a suspension is necessary to the national interests of the United States and will expedite a transition to democracy in Cuba. Section 306(c) also emphasizes that after the effective date no persons may acquire a property interest in any potential or pending Title III action, nor shall pending actions commenced before the date of suspension be affected by a suspension.

(d) Section 306(d) provides that the President may rescind any suspension made under section 306(b) or section 306(c) upon reporting to the appropriate congressional committees that doing so will expedite a transition to democracy in Cuba.

Dated: May 11, 1996.

Janet Reno,

Attorney General.

[FR Doc. 96–12407 Filed 5–16–96; 8:45 am]

BILLING CODE 4410–01–M

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By notice dated August 14, 1995, and published in the Federal Register on August 22, 1995 (60 FR 43613), Ganes Chemicals, Inc., Industrial Park Road, Pennsville, New Jersey 08070, made application to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of methylphenidate.

A registered manufacturer of bulk methylphenidate filed a comment alleging that DEA's notice of application, published in the Federal Register, did not comply with notice and comment rulemaking requirements of the Administrative Procedure Act (APA). In addition, the commentor stated that Ganes' registration would be contrary to the public interest under 21 U.S.C. 823(a).

The commentor maintains that DEA "has deprived [the commentor] and other registered manufacturers and applicants of the opportunity to offer fully-informed comments on Ganes' application." In support of its position, the commentor submits that "registration of bulk manufacturers of schedule I–II controlled substances is subject to notice and comment rulemaking." For the reasons provided below, this conclusion is an incorrect interpretation of the APA. First, the commentor ignores the basic definitions set forth in the APA and, in so doing, confuses notice and comment rulemaking with agency licensing proceedings. The commentor argues that DEA proceedings to grant or deny an application for registration as a bulk manufacturer are rulemakings. However, the clear language of the definition of a "rule" exposes the error of this analysis. The APA defines "rule making" to mean an "agency process for formulating, amending, or repealing a rule." 5 U.S.C. 551(5).

The APA defines a "rule" as:

> The whole or a part of an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy or describing the organization, procedure, or practice requirements of an agency and includes the approval or prescription for the future of rates, wages, corporate or financial structures or reorganizations thereof, prices, facilities, appliances, services or allowances therefore or of valuations, costs, or accounting, or practices bearing on any of the foregoing.

5 U.S.C. 551(4).

Review of the APA's definitions of license [1] and licensing [2] reveals that the granting or denial of a manufacturer's application for registration is a licensing action, not a rulemaking. Courts have

[1] Section 551(8) of the APA defines license as "the whole or a part of an agency permit, certificate, approval, *registration*, charter, membership, statutory exemption or other form of permission." (emphasis added).

[2] Licensing is defined as "agency process respecting the grant, renewal, denial, revocation, suspension, annulment, withdrawal, limitation, amendment, modification, or conditioning of a license." 5 U.S.C. 551(9).

FedEx Shipment Receipt

Address Information

Ship to:	**Ship from:**
ATTN: Legal Department	Paula Alvarez
Expedia, Inc.	
333 108th Ave NE	2525 Ponce De Leon Blvd.
	Suite 1000
BELLEVUE, WA	Coral Gables, FL
98004	33134
US	US
305-445-2500	3054452500

Shipment Information:
Tracking no.: 775917992780
Ship date: 08/06/2019
Estimated shipping charges: 48.67 USD

Package Information
Pricing option: FedEx Standard Rate
Service type: Priority Overnight
Package type: FedEx Envelope
Number of packages: 1
Total weight: 0.50 LBS
Declared Value: 0.00 USD
Special Services:
Pickup/Drop-off: Drop off package at FedEx location

Billing Information:
Bill transportation to: Rivero Mestre-495
Your reference: 173001, 1731-01, 1731 02, 1732-01
P.O. no.:
Invoice no.:
Department no.:

Thank you for shipping online with FedEx ShipManager at fedex.com.

Please Note

FedEx will not be responsible for any claim in excess of $100 per package, whether the result of loss, damage, delay, non-delivery, misdelivery, or misinformation, unless you declare a higher value, pay an additional charge, document your actual loss and file a timely claim. Limitations found in the current FedEx Service Guide apply. Your right to recover from FedEx for any loss, including intrinsic value of the package, loss of sales, income interest, profit, attorney's fees, costs, and other forms of damage whether direct, incidental, consequential, or special is limited to the greater of $100 or the authorized declared value. Recovery cannot exceed actual documented loss. Maximum for items of extraordinary value is $1000, e.g., jewelry, precious metals, negotiable instruments and other items listed in our Service Guide. Written claims must be filed within strict time limits; Consult the applicable FedEx Service Guide for details.
The estimated shipping charge may be different than the actual charges for your shipment. Differences may occur based on actual weight, dimensions, and other factors. Consult the applicable FedEx Service Guide or the FedEx Rate Sheets for details on how shipping charges are calculated.

775917992780

Delivered
Wednesday 8/07/2019 at 10:13 am

DELIVERED

Signed for by: C.ANG

GET STATUS UPDATES

OBTAIN PROOF OF DELIVERY

FROM	TO
Coral Gables, FL US	BELLEVUE, WA US

Shipment Facts

TRACKING NUMBER 775917992780	**SERVICE** FedEx Priority Overnight	**WEIGHT** 0.5 lbs / 0.23 kgs
DELIVERED TO Receptionist/Front Desk	**TOTAL PIECES** 1	**TOTAL SHIPMENT WEIGHT** 0.5 lbs / 0.23 kgs
TERMS Shipper	**PACKAGING** FedEx Envelope	**SPECIAL HANDLING SECTION** Deliver Weekday
STANDARD TRANSIT 8/07/2019 by 10:30 am	**SHIP DATE** Tue 8/06/2019	**ACTUAL DELIVERY** Wed 8/07/2019 10:13 am

Travel History

Local Scan Time

Wednesday , 8/07/2019

10:13 am	BELLEVUE, WA	Delivered
8:33 am	ISSAQUAH, WA	On FedEx vehicle for delivery
7:45 am	ISSAQUAH, WA	At local FedEx facility
5:51 am	SEATTLE, WA	At destination sort facility
3:34 am	MEMPHIS, TN	Departed FedEx location

Tuesday , 8/06/2019

8:15 pm	MIAMI, FL	Left FedEx origin facility

6:57 pm	MIAMI, FL	Picked up
2:23 pm		Shipment information sent to FedEx

RIVERO MESTRE

August 6, 2019

Hotels.com GP, LLC
ATTN: Legal Department
333 108th Avenue NE
Bellevue, WA 98004

Re: Notice of Intent to Commence Action Against Hotels.com GP, LLC under 22 U.S.C. § 6082

To Whom it May Concern:

This firm represents Mario Del Valle, Enrique Falla, and Mario Echevarria (collectively, the "Owners"). In accordance with 22 U.S.C. § 6082(a)(3), this letter serves as notice of the Owners' intent to commence a class action against Hotels.com GP, LLC ("Hotels.com GP") under 22 U.S.C. § 6082.

Mr. Del Valle, the rightful owner of property located in Varadero, intends to sue Hotels.com GP because it has trafficked in the property, as those terms are defined in 22 U.S.C. § 6023, confiscated by the Cuban government from the Del Valle family. Mr. Echevarria and the Echevarria family, the rightful owners of Cayo Coco, Cuba, intend to sue Hotels.com GP because it has trafficked in property, as those terms are defined in 22 U.S.C. § 6023, confiscated by the Cuban government from the Echevarria family. Finally, Mr. Falla, the rightful owner of property located in Varadero, intends to sue Hotels.com GP because it has trafficked in the property, as those terms are defined in 22 U.S.C. § 6023, confiscated by the Cuban government from the Falla family.

Hotels.com GP has benefited, and continues to benefit, from the Owners' property in Cuba (the "Property"). Specifically, Hotels.com GP actively solicited persons to book reservations at hotels built on the Property, and other properties owned by class members, on its website and ultimately profited from those reservations. The Owners intend to bring a class action on behalf of all persons similarly situated.

Mr. Del Valle, Mr. Falla, and Mr. Echevarria hereby demand that Hotels.com GP cease trafficking in their Property, and that of the class, immediately and compensate them as provided in 22 U.S.C. § 6082(a).

Very truly yours,

Andrés Rivero
For the Firm

Rivero Mestre LLP
www.riveromestre.com
T305 4452500 F305 4452505

MIA 2525 Ponce de Leon Blvd. Suite 1000 Miami, FL 33134 NYC

text, or, at a minimum, an outline of comments they proposed to make orally. Such comments will be limited to ten minutes in length. Any interested person also may file a written statement for consideration by the Joint Board and Committee by sending it to the Committee Management Officer. Notifications and statements should be mailed no later than June 19, 1996, to Mr. Robert I. Brauer, Joint Board for the Enrollment of Actuaries, c/o Office of Director of Practice, Internal Revenue Service, Suite 600, 801 Pennsylvania Avenue, NW, Washington, DC 20004 or by facsimile transmission to 202–376–1420.

Dated: May 9, 1996.

Robert I. Brauer,

Advisory Committee Management Officer, Joint Board for the Enrollment of Actuaries.

[FR Doc. 96–12491 Filed 5–16–96; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF JUSTICE

[AG Order No. 2029–96]

Summary of the Provisions of Title III of the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996

AGENCY: Department of Justice.

ACTION: Notice.

SUMMARY: In accordance with the requirement of section 302(a)(8) of the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996, The United States Department of Justice is publishing this notice summarizing the provisions of Title III of the Act. Title III makes persons who knowingly and intentionally "traffic" in confiscated properties, as defined in the Act, subject to private civil damage suits in Federal district court.

EFFECTIVE DATE: This notice is effective May 17, 1996.

FOR FURTHER INFORMATION CONTACT: David E. Bradley, Chief Counsel, Foreign Claims Settlement Commission, Department of Justice, Washington DC 20579, (202) 616–6975.

SUPPLEMENTARY INFORMATION: On March 12, 1996, President Clinton signed into law the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996, P.L. 104–114 (also known as the "Helms-Burton Act"). Title III of the Act discourages foreign investment in properties that were expropriated by the Cuban Government on or after January 1, 1959, without compensation, from persons who are now Untied States nationals. Title III makes persons who knowingly and intentionally "traffic" in such confiscated properties subject to private civil damage suits in Federal district court.

The Act defines "trafficking" broadly, with several exceptions, as set forth below. A trafficker may be liable to the U.S. claimant for the value of the claim, plus interest, reasonable attorney's fees and court costs. In addition, under certain circumstances described below, a person who trafficks in U.S. claimed property may be liable to the claimant for triple the amount of the value of the claim, excluding interest, fees and court costs.

Title III is scheduled to take effect on August 1, 1996. However, the law does not immediately permit U.S. claimants to bring suit to recover from traffickers. First, traffickers will have a three month "grace period" beginning on the effective date during which they may dispose of their interest in the claimed property and avoid liability under Title III. Under the scheduled effective date, therefore, traffickers who dispose of their interests in confiscated property before November 1, 1996, will not be subject to liability to the owner of the claim. Second, until March 13, 1998, only those persons with claims that were certified by the Foreign Claims Settlement Commission ("FCSC") may bring a Title III lawsuit. Third, the Act provides the President with the authority to suspend the effective date for six months, and for additional six month periods, if he determines suspension is necessary to the national interests of the United States and will expedite a transition to democracy in Cuba. Additional requirements and conditions are described below.

Section 302(a)(8) of the Act requires the Attorney General to publish in the Federal Register not later than sixty days after enactment "a concise summary of the provisions of this title, including a statement of the liability under this title of a person trafficking in confiscated property, and the remedies available to United States nationals under this title." This notice and the accompanying Summary of the provisions of Title III fulfill the Attorney General's obligations under this section. The Department has coordinated the issuance of this Summary with the Department of State.

Interested persons should refer to the text of the Act itself or consult a private attorney for further information and clarification.

For the reasons set forth in the preamble, and by the authority vested in me as Attorney general, I hereby issue the following Summary of the Provisions of Title III of the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996:

Summary of the Provisions of Title III of the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996

1. Liability Under Title III

(a) Under section 302(a)(1) of Title III of the Cuban Liberty and Democratic Solidarity (LIBERTAF) Act of 1996 (hereinafter "Title III") subject to certain requirements, conditions, and possible suspensions, a United States national with a claim to property expropriated by the Government of Cuba on or after January 1, 1959, may bring a private lawsuit in U.S. federal district court against a person who trafficks in that property beginning three months after Title III's effective date. The scheduled effective date is August 1, 1996, subject to the President's authority to suspend Title III.

(b) Section 4(13) of the Act defines a trafficker as a person who knowingly and intentionally:

(i) Sells, transfers, distributes, dispenses, brokers, manages, or otherwise disposes of confiscated property, or purchases, leases, receives, possesses, obtains control of, manages, uses, or otherwise acquires or holds an interest in confiscated property;

(ii) Engages in a commercial activity using or otherwise benefiting from confiscated property; or

(iii) Causes, directs, participates in, or profits from trafficking by another person, or otherwise engages in trafficking through another person, without the authorization of any United States national who holds a claim to the property.

(c) Trafficking under section 4(13) does not include:

(i) The delivery of international telecommunication signals to Cuba;

(ii) The trading or holding of securities publicly traded or held, unless the trading is with or by a person determined by the Secretary of the Treasury to be a specially designated national;

(iii) Transactions and uses of property incident to lawful travel to Cuba, to the extent that such transactions and uses of property are necessary to the conduct of such travel; or

(iv) Transactions and uses of property by a person who is both a citizen and a resident of Cuba, and who is not an official of the Cuban Government or the ruling political party in Cuba.

(d) Section 4(11) defines "person" for purposes of the Libertad Act as any person or entity, including any agency or instrumentality of a foreign state.

(e) For purposes of Title III, "United States national" is defined under

section 4(15) to mean (i) any United States citizen, or (ii) any other legal entity which is organized under the laws of the United States, or of any state, the District of Columbia, or any commonwealth, territory, or possession of the United States, and which has its principal place of business in the United States.

2. Remedies Available Under Title III

(a) Section 302(a)(1)(A) provides that, in addition to attorney's fees and court costs, a trafficker will be liable for money damages to the U.S. national who owns the claim to property being trafficked in the greater of the following amounts:

(i) The amount certified by the Foreign Claims Settlement Commission ("FCSC") plus interest;

(ii) If the claim has not been certified by the FCSC, the amount determined by the court in the course of a Title III action, plus interest; or

(iii) The fair market value of the property calculated according to either the current value of the property or the value of the property when confiscated plus interest, whichever is greater.

Interest is to be calculated from the date of confiscation of the property involved to the date on which the action is brought.

(b) Section 302(a)(2) establishes a presumption that the amount for which a person is liable to a U.S. national owning a claim certified by the FCSC is the amount so certified. This presumption will be rebuttable by clear and convincing evidence that one of the other measures of liability under section 302(a)(1)(A) is appropriate.

(c) Under section 302(a)(3), a person who trafficks in property which either serves as the basis for a claim certified by the FCSC or is the subject of written notice at least thirty days before the initiation of an action will be subject to treble damages. Such person's liability, in addition to court costs and reasonable attorney's fees, will thus be triple the amount determined under section 302(a)(1)(A). The notice required under section 302(a)(3) must be in writing and be posted by certified mail or personally delivered. It must contain a statement of intention to commence a Title III action or to join the person as a defendant, the reasons for such action, a demand that the trafficking cease immediately, and a copy of this summary.

(d) Under section 302(a)(7), a Title III action may be settled and a judgment enforced without obtaining any license or permission of an agency of the U.S. Government. This section does not apply to assets blocked pursuant to authorities under section 5(b) of the Trading With the Enemy Act that were being exercised on July 1, 1977. In addition, no claim against the Cuban Government will be considered a property interest the transfer of which requires a license or permission of an agency of the United States.

3. Requirements and Conditions for a Title III Action

(a) Under section 302(a)(4), if the property was confiscated before March 12, 1996, the U.S. national bringing the claim must have owned the claim before March 12, 1996. If the property was confiscated on or after March 12, 1996, a U.S. national who acquires ownership of a claim to the property after its confiscation by assignment for value may not bring a lawsuit under Title III.

(b) Under section 302(a)(5), a U.S. national who was eligible to file a claim with the FCSC but did not do so may not bring an action under this title. Where the FCSC denied a U.S. national's claim that now serves as the basis for a Title III action, the court hearing the action will accept the FCSC's findings as conclusive. A U.S. national bringing an action on the basis of a claim that was not certified by the FCSC may not file a Title III lawsuit until March 13, 1998. Any person bringing an action under Title III whose claim has not been certified by the FCSC has the burden of proving to the court that the interest in the property that is the subject of the claim is not the subject of a claim so certified.

(c) Section 302(b) establishes that, in order for an action to be brought under Title III, the amount in controversy must exceed $50,000, not including interest, costs, and attorneys fees. This amount is exclusive of the increased liability damages under section 302(a)(3).

(d) Under section 302(c), title 28 of the United States Code and the rules of court generally applicable to actions brought under section 1331 of title 28 govern the procedure to be followed in Title III actions. Service of process on an agency or instrumentality of a foreign state in the court of a commercial activity or against individuals acting under color of law shall be made in accordance with section 1608 of title 28 of the United States Code.

(e) Under section 302(d), any judgment entered under Title III shall not be enforceable against an agency or instrumentality of either a transition government in Cuba or a democratically elected government in Cuba.

(f) Section 302(e) amends section 1611 of title 28 of the United States Code by adding a new section, which states that the property of a foreign state shall be immune from attachment and from execution in an action brought under section 302 to the extent that the property is a facility or installation used by an accredited diplomatic mission for official purposes.

(g) Under section 302(f)(1), a U.S. national who brings an action under Title III may not bring any other action seeking monetary or nonmonetary compensation by reason of the same subject matter.

(h) Section 302(f)(2)(A) establishes limits on further recovery by a U.S. national with a FCSC-certified claim depending on whether such Title III action leads to a recovery of a greater, equal or lesser amount than certified by the FCSC. If the claimant's recovery under Title III is equal to or greater than the amount certified by the FCSC, the U.S. national may not recover any payment on the claim under any claims settlement agreement between the United States and Cuba. If the U.S. national in a Title III action recovers less than the amount certified by the FCSC, the U.S. national may only receive payment in any claims settlement agreement between the United States and Cuba to the extent of the difference between the certified claim and the recovery. If there is no recovery, the U.S. national may still receive payment in a claims settlement agreement between the United States and Cuba and will be treated as any other certified claimant who does not bring an action under Title III.

(i) Section 302(f)(2)(B) provides that in the event some or all Title III actions are consolidated by judicial or other action so as to create a pool of assets available to satisfy such claims, FCSC-certified claims will be entitled to payment in full from such pool before any payment is made from such pool with respect to any claim not so certified.

(j) Under section 302(g), if the United States and the Government of Cuba reach a claims settlement agreement settling FCSC-certified claims, any amount paid by Cuba in such an agreement in excess of the payments made under section 302(f)(2) shall be deposited in the U.S. Treasury.

(k) Under section 302(h), the rights created pursuant to Title III may be suspended upon a presidential determination under section 203 that a transition government in Cuba is in place and may be terminated upon a presidential determination that a democratically elected government in Cuba is in power. Neither of these actions shall affect suits commenced before the dates of suspension or termination. While pending suits may proceed to judgment, such judgments

will not be enforceable against a transition or democratically elected government in Cuba under section 302(d).

(l) Claimants bringing an action under Title III will be required to pay a uniform filing fee, to be established by the Judicial Conference of the United States, pursuant to section 302(i).

(m) Section 302(a)(6) provides that no court of the United States shall decline, based upon the act of state doctrine, to make a determination on the merits in an action brought under Title III.

(n) Section 305 provides that actions under section 302 may not be brought more than two years after the trafficking giving rise to the action has ceased to occur.

4. Proof of Ownership of a Claim to Confiscated Property

(a) Section 303(a) provides that certification of a claim by the FCSC is conclusive proof of ownership. In all other cases, the court has the discretion to appoint a special master, including the FCSC, to make determinations of the amount and ownership of the claim. Determinations made by administrative agencies or courts of a foreign government or international organization shall not be conclusive unless made pursuant to binding international arbitration to which the United States or the claimant submitted the claim.

(b) Section 303(b) amends the International Claims Settlement Act of 1949 by authorizing a U.S. district court to refer to the FCSC factual questions under Title III involving the amount and ownership by a U.S. national of a claim to confiscated property in Cuba.

5. Consistency With International Claims Practice

(a) Section 303(c) emphasizes that nothing in the LIBERTAD Act shall be construed to require or otherwise authorize the claims of Cuban nationals who became U.S. citizens after their property was confiscated to be included in a future negotiation and espousal of U.S. claims with a friendly government in Cuba when diplomatic relations are restored. Section 303(c) also states that the LIBERTAD Act shall not be construed as superseding, amending, or otherwise altering certifications that have been made under the FCSC's Cuba Claims Program.

(b) Section 304 amends the International Claims Settlement Act of 1949 to state that no person other than a certified claimant shall have a claim to, participate in, or otherwise have an interest in the compensation proceeds paid to a U.S. national by virtue of a certified claim.

6. Presidential Suspension Authority

(a) Section 306(a) provides that, subject to the President's suspension authority, Title III takes effect on August 1, 1996.

(b) Section 306(b) provides the President with the authority to suspend the effective date of Title III beyond August 1, 1996, for up to six months, and for additional extensions up to six months, upon a determination and report to the appropriate congressional committees that a suspension is necessary to the national interests of the United States and will expedite a transition to democracy in Cuba. An initial determination and report must be submitted to the appropriate congressional committees at least 15 days before August 1, 1996. Additional suspensions or extensions are subject to the same reporting and determination requirements.

(c) Section 306(c) provides the President with the authority to suspend the right to bring an action under Title III after its effective date for up to six months, and for additional extensions up to six months, upon a determination and report that a suspension is necessary to the national interests of the United States and will expedite a transition to democracy in Cuba. Section 306(c) also emphasizes that after the effective date no persons may acquire a property interest in any potential or pending Title III action, nor shall pending actions commenced before the date of suspension be affected by a suspension.

(d) Section 306(d) provides that the President may rescind any suspension made under section 306(b) or section 306(c) upon reporting to the appropriate congressional committees that doing so will expedite a transition to democracy in Cuba.

Dated: May 11, 1996.

Janet Reno,

Attorney General.

[FR Doc. 96–12407 Filed 5–16–96; 8:45 am]

BILLING CODE 4410–01–M

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By notice dated August 14, 1995, and published in the Federal Register on August 22, 1995 (60 FR 43613), Ganes Chemicals, Inc., Industrial Park Road, Pennsville, New Jersey 08070, made application to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of methylphenidate.

A registered manufacturer of bulk methylphenidate filed a comment alleging that DEA's notice of application, published in the Federal Register, did not comply with notice and comment rulemaking requirements of the Administrative Procedure Act (APA). In addition, the commentor stated that Ganes' registration would be contrary to the public interest under 21 U.S.C. 823(a).

The commentor maintains that DEA "has deprived [the commentor] and other registered manufacturers and applicants of the opportunity to offer fully-informed comments on Ganes' application." In support of its position, the commentor submits that "registration of bulk manufacturers of schedule I–II controlled substances is subject to notice and comment rulemaking." For the reasons provided below, this conclusion is an incorrect interpretation of the APA. First, the commentor ignores the basic definitions set forth in the APA and, in so doing, confuses notice and comment rulemaking with agency licensing proceedings. The commentor argues that DEA proceedings to grant or deny an application for registration as a bulk manufacturer are rulemakings. However, the clear language of the definition of a "rule" exposes the error of this analysis. The APA defines "rule making" to mean an "agency process for formulating, amending, or repealing a rule." 5 U.S.C. 551(5).

The APA defines a "rule" as:

> The whole or a part of an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy or describing the organization, procedure, or practice requirements of an agency and includes the approval or prescription for the future of rates, wages, corporate or financial structures or reorganizations thereof, prices, facilities, appliances, services or allowances therefore or of valuations, costs, or accounting, or practices bearing on any of the foregoing.

5 U.S.C. 551(4).

Review of the APA's definitions of license [1] and licensing [2] reveals that the granting or denial of a manufacturer's application for registration is a licensing action, not a rulemaking. Courts have

[1] Section 551(8) of the APA defines license as "the whole or a part of an agency permit, certificate, approval, *registration*, charter, membership, statutory exemption or other form of permission," (emphasis added).

[2] Licensing is defined as "agency process respecting the grant, renewal, denial, revocation, suspension, annulment, withdrawal, limitation, amendment, modification, or conditioning of a license." 5 U.S.C. 551(9).

FedEx Shipment Receipt

Address Information

Ship to:	**Ship from:**
ATTN: Legal Department	Paula Alvarez
Hotels.com GP, LLC	
333 108th Avenue NE	2525 Ponce De Leon Blvd.
	Suite 1000
BELLEVUE, WA	Coral Gables, FL
98004	33134
US	US
305-445-2500	3054452500

Shipment Information:
Tracking no.: 775918088138
Ship date: 08/06/2019
Estimated shipping charges: 48.67 USD

Package Information
Pricing option: FedEx Standard Rate
Service type: Priority Overnight
Package type: FedEx Envelope
Number of packages: 1
Total weight: 0.50 LBS
Declared Value: 0.00 USD
Special Services:
Pickup/Drop-off: Drop off package at FedEx location

Billing Information:
Bill transportation to: Rivero Mestre-495
Your reference: 1730.01 1731.01 1731.02 1732
P.O. no.:
Invoice no.:
Department no.:

Thank you for shipping online with FedEx ShipManager at fedex.com.

Please Note

FedEx will not be responsible for any claim in excess of $100 per package, whether the result of loss, damage, delay, non-delivery, misdelivery, or misinformation, unless you declare a higher value, pay an additional charge, document your actual loss and file a timely claim. Limitations found in the current FedEx Service Guide apply. Your right to recover from FedEx for any loss, including intrinsic value of the package, loss of sales, income interest, profit, attorney's fees, costs, and other forms of damage whether direct, incidental, consequential, or special is limited to the greater of $100 or the authorized declared value. Recovery cannot exceed actual documented loss. Maximum for items of extraordinary value is $1000, e.g., jewelry, precious metals, negotiable instruments and other items listed in our Service Guide. Written claims must be filed within strict time limits; Consult the applicable FedEx Service Guide for details.
The estimated shipping charge may be different than the actual charges for your shipment. Differences may occur based on actual weight, dimensions, and other factors. Consult the applicable FedEx Service Guide or the FedEx Rate Sheets for details on how shipping charges are calculated.

775918088138

Delivered
Wednesday 8/07/2019 at 10:13 am

DELIVERED

Signed for by: C.ANG

GET STATUS UPDATES

OBTAIN PROOF OF DELIVERY

FROM	TO
Coral Gables, FL US	BELLEVUE, WA US

Shipment Facts

TRACKING NUMBER 775918088138	**SERVICE** FedEx Priority Overnight	**WEIGHT** 0.5 lbs / 0.23 kgs
DELIVERED TO Receptionist/Front Desk	**TOTAL PIECES** 1	**TOTAL SHIPMENT WEIGHT** 0.5 lbs / 0.23 kgs
TERMS Shipper	**SHIPPER REFERENCE** 1730.01 1731.01 1731.02 1732	**PACKAGING** FedEx Envelope
SPECIAL HANDLING SECTION Deliver Weekday	**STANDARD TRANSIT** 8/07/2019 by 10:30 am	**SHIP DATE** Tue 8/06/2019
ACTUAL DELIVERY Wed 8/07/2019 10:13 am		

Travel History

Local Scan Time

Wednesday , 8/07/2019

10:13 am	BELLEVUE, WA	Delivered
8:33 am	ISSAQUAH, WA	On FedEx vehicle for delivery
7:47 am	ISSAQUAH, WA	At local FedEx facility
5:51 am	SEATTLE, WA	At destination sort facility
3:34 am	MEMPHIS, TN	Departed FedEx location

Tuesday , 8/06/2019

8:15 pm	MIAMI, FL	Left FedEx origin facility
6:57 pm	MIAMI, FL	Picked up
2:27 pm		Shipment information sent to FedEx

RIVERO MESTRE

August 6, 2019

Hotels.com, L.P.
ATTN: Legal Department
333 108th Avenue NE
Bellevue, WA 98004

Re: Notice of Intent to Commence Action Against Hotels.com, L.P. under 22 U.S.C. § 6082

To Whom it May Concern:

This firm represents Mario Del Valle, Enrique Falla, and Mario Echevarria (collectively, the "Owners"). In accordance with 22 U.S.C. § 6082(a)(3), this letter serves as notice of the Owners' intent to commence a class action against Hotels.com, L.P. ("Hotels.com") under 22 U.S.C. § 6082.

Mr. Del Valle, the rightful owner of property located in Varadero, intends to sue Hotels.com because it has trafficked in the property, as those terms are defined in 22 U.S.C. § 6023, confiscated by the Cuban government from the Del Valle family. Mr. Echevarria and the Echevarria family, the rightful owners of Cayo Coco, Cuba, intend to sue Hotels.com because it has trafficked in property, as those terms are defined in 22 U.S.C. § 6023, confiscated by the Cuban government from the Echevarria family. Finally, Mr. Falla, the rightful owner of property located in Varadero, intends to sue Hotels.com because it has trafficked in the property, as those terms are defined in 22 U.S.C. § 6023, confiscated by the Cuban government from the Falla family.

Hotels.com has benefited, and continues to benefit, from the Owners' property in Cuba (the "Property"). Specifically, Hotels.com actively solicited persons to book reservations at hotels built on the Property, and other properties owned by class members, on its website and ultimately profited from those reservations. The Owners intend to bring a class action on behalf of all persons similarly situated.

Mr. Del Valle, Mr. Falla, and Mr. Echevarria hereby demand that Hotels.com cease trafficking in their Property, and that of the class, immediately and compensate them as provided in 22 U.S.C. § 6082(a).

Very truly yours,

Andrés Rivero
For the Firm

Rivero Mestre LLP
www.riveromestre.com
T305 4452500 F305 4452505

MIA 2525 Ponce de Leon Blvd. Suite 1000 Miami, FL 33134 NYC

text, or, at a minimum, an outline of comments they proposed to make orally. Such comments will be limited to ten minutes in length. Any interested person also may file a written statement for consideration by the Joint Board and Committee by sending it to the Committee Management Officer. Notifications and statements should be mailed no later than June 19, 1996, to Mr. Robert I. Brauer, Joint Board for the Enrollment of Actuaries, c/o Office of Director of Practice, Internal Revenue Service, Suite 600, 801 Pennsylvania Avenue, NW, Washington, DC 20004 or by facsimile transmission to 202–376–1420.

Dated: May 9, 1996.

Robert I. Brauer,

Advisory Committee Management Officer, Joint Board for the Enrollment of Actuaries.

[FR Doc. 96–12491 Filed 5–16–96; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF JUSTICE

[AG Order No. 2029–96]

Summary of the Provisions of Title III of the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996

AGENCY: Department of Justice.

ACTION: Notice.

SUMMARY: In accordance with the requirement of section 302(a)(8) of the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996, The United States Department of Justice is publishing this notice summarizing the provisions of Title III of the Act. Title III makes persons who knowingly and intentionally "traffic" in confiscated properties, as defined in the Act, subject to private civil damage suits in Federal district court.

EFFECTIVE DATE: This notice is effective May 17, 1996.

FOR FURTHER INFORMATION CONTACT: David E. Bradley, Chief Counsel, Foreign Claims Settlement Commission, Department of Justice, Washington DC 20579, (202) 616–6975.

SUPPLEMENTARY INFORMATION: On March 12, 1996, President Clinton signed into law the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996, P.L. 104–114 (also known as the "Helms-Burton Act"). Title III of the Act discourages foreign investment in properties that were expropriated by the Cuban Government on or after January 1, 1959, without compensation, from persons who are now Untied States nationals. Title III makes persons who knowingly and intentionally "traffic" in such confiscated properties subject to private civil damage suits in Federal district court.

The Act defines "trafficking" broadly, with several exceptions, as set forth below. A trafficker may be liable to the U.S. claimant for the value of the claim, plus interest, reasonable attorney's fees and court costs. In addition, under certain circumstances described below, a person who trafficks in U.S. claimed property may be liable to the claimant for triple the amount of the value of the claim, excluding interest, fees and court costs.

Title III is scheduled to take effect on August 1, 1996. However, the law does not immediately permit U.S. claimants to bring suit to recover from traffickers. First, traffickers will have a three month "grace period" beginning on the effective date during which they may dispose of their interest in the claimed property and avoid liability under Title III. Under the scheduled effective date, therefore, traffickers who dispose of their interests in confiscated property before November 1, 1996, will not be subject to liability to the owner of the claim. Second, until March 13, 1998, only those persons with claims that were certified by the Foreign Claims Settlement Commission ("FCSC") may bring a Title III lawsuit. Third, the Act provides the President with the authority to suspend the effective date for six months, and for additional six month periods, if he determines suspension is necessary to the national interests of the United States and will expedite a transition to democracy in Cuba. Additional requirements and conditions are described below.

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Interested persons should refer to the text of the Act itself or consult a private attorney for further information and clarification.

For the reasons set forth in the preamble, and by the authority vested in me as Attorney general, I hereby issue the following Summary of the Provisions of Title III of the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996:

Summary of the Provisions of Title III of the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996

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(b) Section 4(13) of the Act defines a trafficker as a person who knowingly and intentionally:

(i) Sells, transfers, distributes, dispenses, brokers, manages, or otherwise disposes of confiscated property, or purchases, leases, receives, possesses, obtains control of, manages, uses, or otherwise acquires or holds an interest in confiscated property;

(ii) Engages in a commercial activity using or otherwise benefiting from confiscated property; or

(iii) Causes, directs, participates in, or profits from trafficking by another person, or otherwise engages in trafficking through another person, without the authorization of any United States national who holds a claim to the property.

(c) Trafficking under section 4(13) does not include:

(i) The delivery of international telecommunication signals to Cuba;

(ii) The trading or holding of securities publicly traded or held, unless the trading is with or by a person determined by the Secretary of the Treasury to be a specially designated national;

(iii) Transactions and uses of property incident to lawful travel to Cuba, to the extent that such transactions and uses of property are necessary to the conduct of such travel; or

(iv) Transactions and uses of property by a person who is both a citizen and a resident of Cuba, and who is not an official of the Cuban Government or the ruling political party in Cuba.

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section 4(15) to mean (i) any United States citizen, or (ii) any other legal entity which is organized under the laws of the United States, or of any state, the District of Columbia, or any commonwealth, territory, or possession of the United States, and which has its principal place of business in the United States.

2. Remedies Available Under Title III

(a) Section 302(a)(1)(A) provides that, in addition to attorney's fees and court costs, a trafficker will be liable for money damages to the U.S. national who owns the claim to property being trafficked in the greater of the following amounts:

(i) The amount certified by the Foreign Claims Settlement Commission ("FCSC") plus interest;

(ii) If the claim has not been certified by the FCSC, the amount determined by the court in the course of a Title III action, plus interest; or

(iii) The fair market value of the property calculated according to either the current value of the property or the value of the property when confiscated plus interest, whichever is greater.

Interest is to be calculated from the date of confiscation of the property involved to the date on which the action is brought.

(b) Section 302(a)(2) establishes a presumption that the amount for which a person is liable to a U.S. national owning a claim certified by the FCSC is the amount so certified. This presumption will be rebuttable by clear and convincing evidence that one of the other measures of liability under section 302(a)(1)(A) is appropriate.

(c) Under section 302(a)(3), a person who trafficks in property which either serves as the basis for a claim certified by the FCSC or is the subject of written notice at least thirty days before the initiation of an action will be subject to treble damages. Such person's liability, in addition to court costs and reasonable attorney's fees, will thus be triple the amount determined under section 302(a)(1)(A). The notice required under section 302(a)(3) must be in writing and be posted by certified mail or personally delivered. It must contain a statement of intention to commence a Title III action or to join the person as a defendant, the reasons for such action, a demand that the trafficking cease immediately, and a copy of this summary.

(d) Under section 302(a)(7), a Title III action may be settled and a judgment enforced without obtaining any license or permission of an agency of the U.S. Government. This section does not apply to assets blocked pursuant to authorities under section 5(b) of the Trading With the Enemy Act that were being exercised on July 1, 1977. In addition, no claim against the Cuban Government will be considered a property interest the transfer of which requires a license or permission of an agency of the United States.

3. Requirements and Conditions for a Title III Action

(a) Under section 302(a)(4), if the property was confiscated before March 12, 1996, the U.S. national bringing the claim must have owned the claim before March 12, 1996. If the property was confiscated on or after March 12, 1996, a U.S. national who acquires ownership of a claim to the property after its confiscation by assignment for value may not bring a lawsuit under Title III.

(b) Under section 302(a)(5), a U.S. national who was eligible to file a claim with the FCSC but did not do so may not bring an action under this title. Where the FCSC denied a U.S. national's claim that now serves as the basis for a Title III action, the court hearing the action will accept the FCSC's findings as conclusive. A U.S. national bringing an action on the basis of a claim that was not certified by the FCSC may not file a Title III lawsuit until March 13, 1998. Any person bringing an action under Title III whose claim has not been certified by the FCSC has the burden of proving to the court that the interest in the property that is the subject of the claim is not the subject of a claim so certified.

(c) Section 302(b) establishes that, in order for an action to be brought under Title III, the amount in controversy must exceed $50,000, not including interest, costs, and attorneys fees. This amount is exclusive of the increased liability damages under section 302(a)(3).

(d) Under section 302(c), title 28 of the United States Code and the rules of court generally applicable to actions brought under section 1331 of title 28 govern the procedure to be followed in Title III actions. Service of process on an agency or instrumentality of a foreign state in the court of a commercial activity or against individuals acting under color of law shall be made in accordance with section 1608 of title 28 of the United States Code.

(e) Under section 302(d), any judgment entered under Title III shall not be enforceable against an agency or instrumentality of either a transition government in Cuba or a democratically elected government in Cuba.

(f) Section 302(e) amends section 1611 of title 28 of the United States Code by adding a new section, which states that the property of a foreign state shall be immune from attachment and from execution in an action brought under section 302 to the extent that the property is a facility or installation used by an accredited diplomatic mission for official purposes.

(g) Under section 302(f)(1), a U.S. national who brings an action under Title III may not bring any other action seeking monetary or nonmonetary compensation by reason of the same subject matter.

(h) Section 302(f)(2)(A) establishes limits on further recovery by a U.S. national with a FCSC-certified claim depending on whether such Title III action leads to a recovery of a greater, equal or lesser amount than certified by the FCSC. If the claimant's recovery under Title III is equal to or greater than the amount certified by the FCSC, the U.S. national may not recover any payment on the claim under any claims settlement agreement between the United States and Cuba. If the U.S. national in a Title III action recovers less than the amount certified by the FCSC, the U.S. national may only receive payment in any claims settlement agreement between the United States and Cuba to the extent of the difference between the certified claim and the recovery. If there is no recovery, the U.S. national may still receive payment in a claims settlement agreement between the United States and Cuba and will be treated as any other certified claimant who does not bring an action under Title III.

(i) Section 302(f)(2)(B) provides that in the event some or all Title III actions are consolidated by judicial or other action so as to create a pool of assets available to satisfy such claims, FCSC-certified claims will be entitled to payment in full from such pool before any payment is made from such pool with respect to any claim not so certified.

(j) Under section 302(g), if the United States and the Government of Cuba reach a claims settlement agreement settling FCSC-certified claims, any amount paid by Cuba in such an agreement in excess of the payments made under section 302(f)(2) shall be deposited in the U.S. Treasury.

(k) Under section 302(h), the rights created pursuant to Title III may be suspended upon a presidential determination under section 203 that a transition government in Cuba is in place and may be terminated upon a presidential determination that a democratically elected government in Cuba is in power. Neither of these actions shall affect suits commenced before the dates of suspension or termination. While pending suits may proceed to judgment, such judgments

will not be enforceable against a transition or democratically elected government in Cuba under section 302(d).

(l) Claimants bringing an action under Title III will be required to pay a uniform filing fee, to be established by the Judicial Conference of the United States, pursuant to section 302(i).

(m) Section 302(a)(6) provides that no court of the United States shall decline, based upon the act of state doctrine, to make a determination on the merits in an action brought under Title III.

(n) Section 305 provides that actions under section 302 may not be brought more than two years after the trafficking giving rise to the action has ceased to occur.

4. Proof of Ownership of a Claim to Confiscated Property

(a) Section 303(a) provides that certification of a claim by the FCSC is conclusive proof of ownership. In all other cases, the court has the discretion to appoint a special master, including the FCSC, to make determinations of the amount and ownership of the claim. Determinations made by administrative agencies or courts of a foreign government or international organization shall not be conclusive unless made pursuant to binding international arbitration to which the United States or the claimant submitted the claim.

(b) Section 303(b) amends the International Claims Settlement Act of 1949 by authorizing a U.S. district court to refer to the FCSC factual questions under Title III involving the amount and ownership by a U.S. national of a claim to confiscated property in Cuba.

5. Consistency With International Claims Practice

(a) Section 303(c) emphasizes that nothing in the LIBERTAD Act shall be construed to require or otherwise authorize the claims of Cuban nationals who became U.S. citizens after their property was confiscated to be included in a future negotiation and espousal of U.S. claims with a friendly government in Cuba when diplomatic relations are restored. Section 303(c) also states that the LIBERTAD Act shall not be construed as superseding, amending, or otherwise altering certifications that have been made under the FCSC's Cuba Claims Program.

(b) Section 304 amends the International Claims Settlement Act of 1949 to state that no person other than a certified claimant shall have a claim to, participate in, or otherwise have an interest in the compensation proceeds paid to a U.S. national by virtue of a certified claim.

6. Presidential Suspension Authority

(a) Section 306(a) provides that, subject to the President's suspension authority, Title III takes effect on August 1, 1996.

(b) Section 306(b) provides the President with the authority to suspend the effective date of Title III beyond August 1, 1996, for up to six months, and for additional extensions up to six months, upon a determination and report to the appropriate congressional committees that a suspension is necessary to the national interests of the United States and will expedite a transition to democracy in Cuba. An initial determination and report must be submitted to the appropriate congressional committees at least 15 days before August 1, 1996. Additional suspensions or extensions are subject to the same reporting and determination requirements.

(c) Section 306(c) provides the President with the authority to suspend the right to bring an action under Title III after its effective date for up to six months, and for additional extensions up to six months, upon a determination and report that a suspension is necessary to the national interests of the United States and will expedite a transition to democracy in Cuba. Section 306(c) also emphasizes that after the effective date no persons may acquire a property interest in any potential or pending Title III action, nor shall pending actions commenced before the date of suspension be affected by a suspension.

(d) Section 306(d) provides that the President may rescind any suspension made under section 306(b) or section 306(c) upon reporting to the appropriate congressional committees that doing so will expedite a transition to democracy in Cuba.

Dated: May 11, 1996.

Janet Reno,

Attorney General.

[FR Doc. 96–12407 Filed 5–16–96; 8:45 am]

BILLING CODE 4410–01–M

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By notice dated August 14, 1995, and published in the Federal Register on August 22, 1995 (60 FR 43613), Ganes Chemicals, Inc., Industrial Park Road, Pennsville, New Jersey 08070, made application to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of methylphenidate.

A registered manufacturer of bulk methylphenidate filed a comment alleging that DEA's notice of application, published in the Federal Register, did not comply with notice and comment rulemaking requirements of the Administrative Procedure Act (APA). In addition, the commentor stated that Ganes' registration would be contrary to the public interest under 21 U.S.C. 823(a).

The commentor maintains that DEA "has deprived [the commentor] and other registered manufacturers and applicants of the opportunity to offer fully-informed comments on Ganes' application." In support of its position, the commentor submits that "registration of bulk manufacturers of schedule I–II controlled substances is subject to notice and comment rulemaking." For the reasons provided below, this conclusion is an incorrect interpretation of the APA. First, the commentor ignores the basic definitions set forth in the APA and, in so doing, confuses notice and comment rulemaking with agency licensing proceedings. The commentor argues that DEA proceedings to grant or deny an application for registration as a bulk manufacturer are rulemakings. However, the clear language of the definition of a "rule" exposes the error of this analysis. The APA defines "rule making" to mean an "agency process for formulating, amending, or repealing a rule." 5 U.S.C. 551(5).

The APA defines a "rule" as:

> The whole or a part of an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy or describing the organization, procedure, or practice requirements of an agency and includes the approval or prescription for the future of rates, wages, corporate or financial structures or reorganizations thereof, prices, facilities, appliances, services or allowances therefore or of valuations, costs, or accounting, or practices bearing on any of the foregoing.

5 U.S.C. 551(4).

Review of the APA's definitions of license [1] and licensing [2] reveals that the granting or denial of a manufacturer's application for registration is a licensing action, not a rulemaking. Courts have

[1] Section 551(8) of the APA defines license as "the whole or a part of an agency permit, certificate, approval, *registration*, charter, membership, statutory exemption or other form of permission." (emphasis added).

[2] Licensing is defined as "agency process respecting the grant, renewal, denial, revocation, suspension, annulment, withdrawal, limitation, amendment, modification, or conditioning of a license." 5 U.S.C. 551(9).

FedEx Shipment Receipt

Address Information

Ship to:	**Ship from:**
ATTN: Legal Department	Paula Alvarez
Hotels.com, L.P.	
333 108th Avenue NE	2525 Ponce De Leon Blvd.
	Suite 1000
BELLEVUE, WA	Coral Gables, FL
98004	33134
US	US
305-445-2500	3054452500

Shipment Information:
Tracking no.: 775918182717
Ship date: 08/06/2019
Estimated shipping charges: 48.67 USD

Package Information
Pricing option: FedEx Standard Rate
Service type: Priority Overnight
Package type: FedEx Envelope
Number of packages: 1
Total weight: 0.50 LBS
Declared Value: 0.00 USD
Special Services:
Pickup/Drop-off: Drop off package at FedEx location

Billing Information:
Bill transportation to: Rivero Mestre-495
Your reference: 1730.01 1731.01 1731.02 1732
P.O. no.:
Invoice no.:
Department no.:

Thank you for shipping online with FedEx ShipManager at fedex.com.

Please Note

FedEx will not be responsible for any claim in excess of $100 per package, whether the result of loss, damage, delay, non-delivery, misdelivery, or misinformation, unless you declare a higher value, pay an additional charge, document your actual loss and file a timely claim. Limitations found in the current FedEx Service Guide apply. Your right to recover from FedEx for any loss, including intrinsic value of the package, loss of sales, income interest, profit, attorney's fees, costs, and other forms of damage whether direct, incidental, consequential, or special is limited to the greater of $100 or the authorized declared value. Recovery cannot exceed actual documented loss. Maximum for items of extraordinary value is $1000, e.g., jewelry, precious metals, negotiable instruments and other items listed in our Service Guide. Written claims must be filed within strict time limits; Consult the applicable FedEx Service Guide for details.
The estimated shipping charge may be different than the actual charges for your shipment. Differences may occur based on actual weight, dimensions, and other factors. Consult the applicable FedEx Service Guide or the FedEx Rate Sheets for details on how shipping charges are calculated.

775918182717

Delivered
Wednesday 8/07/2019 at 10:13 am

DELIVERED

Signed for by: C.ANG

GET STATUS UPDATES

OBTAIN PROOF OF DELIVERY

FROM	TO
Coral Gables, FL US	BELLEVUE, WA US

Shipment Facts

TRACKING NUMBER 775918182717	**SERVICE** FedEx Priority Overnight	**WEIGHT** 0.5 lbs / 0.23 kgs
DELIVERED TO Receptionist/Front Desk	**TOTAL PIECES** 1	**TOTAL SHIPMENT WEIGHT** 0.5 lbs / 0.23 kgs
TERMS Shipper	**SHIPPER REFERENCE** 1730.01 1731.01 1731.02 1732	**PACKAGING** FedEx Envelope
SPECIAL HANDLING SECTION Deliver Weekday	**STANDARD TRANSIT** 8/07/2019 by 10:30 am	**SHIP DATE** Tue 8/06/2019
ACTUAL DELIVERY Wed 8/07/2019 10:13 am		

Travel History

Local Scan Time

Wednesday , 8/07/2019

10:13 am	BELLEVUE, WA	Delivered
8:33 am	ISSAQUAH, WA	On FedEx vehicle for delivery
7:47 am	ISSAQUAH, WA	At local FedEx facility
5:51 am	SEATTLE, WA	At destination sort facility
3:34 am	MEMPHIS, TN	Departed FedEx location

Tuesday , 8/06/2019

8:15 pm	MIAMI, FL	Left FedEx origin facility
6:57 pm	MIAMI, FL	Picked up
2:32 pm		Shipment information sent to FedEx

RIVERO MESTRE

August 6, 2019

Orbitz, LLC
ATTN: Legal Department
333 108th Avenue NE
Bellevue, WA 98004

Re: Notice of Intent to Commence Action Against Orbitz, LLC under 22 U.S.C. § 6082

To Whom it May Concern:

This firm represents Mario Del Valle, Enrique Falla, and Mario Echevarria (collectively, the "Owners"). In accordance with 22 U.S.C. § 6082(a)(3), this letter serves as notice of the Owners' intent to commence a class action against Orbitz, LLC ("Orbitz") under 22 U.S.C. § 6082.

Mr. Del Valle, the rightful owner of property located in Varadero, intends to sue Orbitz because it has trafficked in the property, as those terms are defined in 22 U.S.C. § 6023, confiscated by the Cuban government from the Del Valle family. Mr. Echevarria and the Echevarria family, the rightful owners of Cayo Coco, Cuba, intend to sue Orbitz because it has trafficked in property, as those terms are defined in 22 U.S.C. § 6023, confiscated by the Cuban government from the Echevarria family. Finally, Mr. Falla, the rightful owner of property located in Varadero, intends to sue Orbitz because it has trafficked in the property, as those terms are defined in 22 U.S.C. § 6023, confiscated by the Cuban government from the Falla family.

Orbitz has benefited, and continues to benefit, from the Owners' property in Cuba (the "Property"). Specifically, Orbitz actively solicited persons to book reservations at hotels built on the Property, and other properties owned by class members, on its website and ultimately profited from those reservations. The Owners intend to bring a class action on behalf of all persons similarly situated.

Mr. Del Valle, Mr. Falla, and Mr. Echevarria hereby demand that Orbitz cease trafficking in their Property, and that of the class, immediately and compensate them as provided in 22 U.S.C. § 6082(a).

Very truly yours,

Andrés Rivero
For the Firm

Rivero Mestre LLP
www.riveromestre.com
T305 4452500 F305 4452505

MIA 2525 Ponce de Leon Blvd. Suite 1000 Miami, FL 33134 NYC

text, or, at a minimum, an outline of comments they proposed to make orally. Such comments will be limited to ten minutes in length. Any interested person also may file a written statement for consideration by the Joint Board and Committee by sending it to the Committee Management Officer. Notifications and statements should be mailed no later than June 19, 1996, to Mr. Robert I. Brauer, Joint Board for the Enrollment of Actuaries, c/o Office of Director of Practice, Internal Revenue Service, Suite 600, 801 Pennsylvania Avenue, NW, Washington, DC 20004 or by facsimile transmission to 202–376–1420.

Dated: May 9, 1996.

Robert I. Brauer,

Advisory Committee Management Officer, Joint Board for the Enrollment of Actuaries.

[FR Doc. 96–12491 Filed 5–16–96; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF JUSTICE

[AG Order No. 2029–96]

Summary of the Provisions of Title III of the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996

AGENCY: Department of Justice.

ACTION: Notice.

SUMMARY: In accordance with the requirement of section 302(a)(8) of the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996, The United States Department of Justice is publishing this notice summarizing the provisions of Title III of the Act. Title III makes persons who knowingly and intentionally "traffic" in confiscated properties, as defined in the Act, subject to private civil damage suits in Federal district court.

EFFECTIVE DATE: This notice is effective May 17, 1996.

FOR FURTHER INFORMATION CONTACT: David E. Bradley, Chief Counsel, Foreign Claims Settlement Commission, Department of Justice, Washington DC 20579, (202) 616–6975.

SUPPLEMENTARY INFORMATION: On March 12, 1996, President Clinton signed into law the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996, P.L. 104–114 (also known as the "Helms-Burton Act"). Title III of the Act discourages foreign investment in properties that were expropriated by the Cuban Government on or after January 1, 1959, without compensation, from persons who are now Untied States nationals. Title III makes persons who knowingly and intentionally "traffic" in such confiscated properties subject to private civil damage suits in Federal district court.

The Act defines "trafficking" broadly, with several exceptions, as set forth below. A trafficker may be liable to the U.S. claimant for the value of the claim, plus interest, reasonable attorney's fees and court costs. In addition, under certain circumstances described below, a person who trafficks in U.S. claimed property may be liable to the claimant for triple the amount of the value of the claim, excluding interest, fees and court costs.

Title III is scheduled to take effect on August 1, 1996. However, the law does not immediately permit U.S. claimants to bring suit to recover from traffickers. First, traffickers will have a three month "grace period" beginning on the effective date during which they may dispose of their interest in the claimed property and avoid liability under Title III. Under the scheduled effective date, therefore, traffickers who dispose of their interests in confiscated property before November 1, 1996, will not be subject to liability to the owner of the claim. Second, until March 13, 1998, only those persons with claims that were certified by the Foreign Claims Settlement Commission ("FCSC") may bring a Title III lawsuit. Third, the Act provides the President with the authority to suspend the effective date for six months, and for additional six month periods, if he determines suspension is necessary to the national interests of the United States and will expedite a transition to democracy in Cuba. Additional requirements and conditions are described below.

Section 302(a)(8) of the Act requires the Attorney General to publish in the Federal Register not later than sixty days after enactment "a concise summary of the provisions of this title, including a statement of the liability under this title of a person trafficking in confiscated property, and the remedies available to United States nationals under this title." This notice and the accompanying Summary of the provisions of Title III fulfill the Attorney General's obligations under this section. The Department has coordinated the issuance of this Summary with the Department of State.

Interested persons should refer to the text of the Act itself or consult a private attorney for further information and clarification.

For the reasons set forth in the preamble, and by the authority vested in me as Attorney general, I hereby issue the following Summary of the Provisions of Title III of the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996:

Summary of the Provisions of Title III of the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996

1. Liability Under Title III

(a) Under section 302(a)(1) of Title III of the Cuban Liberty and Democratic Solidarity (LIBERTAF) Act of 1996 (hereinafter "Title III") subject to certain requirements, conditions, and possible suspensions, a United States national with a claim to property expropriated by the Government of Cuba on or after January 1, 1959, may bring a private lawsuit in U.S. federal district court against a person who trafficks in that property beginning three months after Title III's effective date. The scheduled effective date is August 1, 1996, subject to the President's authority to suspend Title III.

(b) Section 4(13) of the Act defines a trafficker as a person who knowingly and intentionally:

(i) Sells, transfers, distributes, dispenses, brokers, manages, or otherwise disposes of confiscated property, or purchases, leases, receives, possesses, obtains control of, manages, uses, or otherwise acquires or holds an interest in confiscated property;

(ii) Engages in a commercial activity using or otherwise benefiting from confiscated property; or

(iii) Causes, directs, participates in, or profits from trafficking by another person, or otherwise engages in trafficking through another person, without the authorization of any United States national who holds a claim to the property.

(c) Trafficking under section 4(13) does not include:

(i) The delivery of international telecommunication signals to Cuba;

(ii) The trading or holding of securities publicly traded or held, unless the trading is with or by a person determined by the Secretary of the Treasury to be a specially designated national;

(iii) Transactions and uses of property incident to lawful travel to Cuba, to the extent that such transactions and uses of property are necessary to the conduct of such travel; or

(iv) Transactions and uses of property by a person who is both a citizen and a resident of Cuba, and who is not an official of the Cuban Government or the ruling political party in Cuba.

(d) Section 4(11) defines "person" for purposes of the Libertad Act as any person or entity, including any agency or instrumentality of a foreign state.

(e) For purposes of Title III, "United States national" is defined under

section 4(15) to mean (i) any United States citizen, or (ii) any other legal entity which is organized under the laws of the United States, or of any state, the District of Columbia, or any commonwealth, territory, or possession of the United States, and which has its principal place of business in the United States.

2. Remedies Available Under Title III

(a) Section 302(a)(1)(A) provides that, in addition to attorney's fees and court costs, a trafficker will be liable for money damages to the U.S. national who owns the claim to property being trafficked in the greater of the following amounts:

(i) The amount certified by the Foreign Claims Settlement Commission ("FCSC") plus interest;

(ii) If the claim has not been certified by the FCSC, the amount determined by the court in the course of a Title III action, plus interest; or

(iii) The fair market value of the property calculated according to either the current value of the property or the value of the property when confiscated plus interest, whichever is greater.

Interest is to be calculated from the date of confiscation of the property involved to the date on which the action is brought.

(b) Section 302(a)(2) establishes a presumption that the amount for which a person is liable to a U.S. national owning a claim certified by the FCSC is the amount so certified. This presumption will be rebuttable by clear and convincing evidence that one of the other measures of liability under section 302(a)(1)(A) is appropriate.

(c) Under section 302(a)(3), a person who trafficks in property which either serves as the basis for a claim certified by the FCSC or is the subject of written notice at least thirty days before the initiation of an action will be subject to treble damages. Such person's liability, in addition to court costs and reasonable attorney's fees, will thus be triple the amount determined under section 302(a)(1)(A). The notice required under section 302(a)(3) must be in writing and be posted by certified mail or personally delivered. It must contain a statement of intention to commence a Title III action or to join the person as a defendant, the reasons for such action, a demand that the trafficking cease immediately, and a copy of this summary.

(d) Under section 302(a)(7), a Title III action may be settled and a judgment enforced without obtaining any license or permission of an agency of the U.S. Government. This section does not apply to assets blocked pursuant to authorities under section 5(b) of the Trading With the Enemy Act that were being exercised on July 1, 1977. In addition, no claim against the Cuban Government will be considered a property interest the transfer of which requires a license or permission of an agency of the United States.

3. Requirements and Conditions for a Title III Action

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(b) Under section 302(a)(5), a U.S. national who was eligible to file a claim with the FCSC but did not do so may not bring an action under this title. Where the FCSC denied a U.S. national's claim that now serves as the basis for a Title III action, the court hearing the action will accept the FCSC's findings as conclusive. A U.S. national bringing an action on the basis of a claim that was not certified by the FCSC may not file a Title III lawsuit until March 13, 1998. Any person bringing an action under Title III whose claim has not been certified by the FCSC has the burden of proving to the court that the interest in the property that is the subject of the claim is not the subject of a claim so certified.

(c) Section 302(b) establishes that, in order for an action to be brought under Title III, the amount in controversy must exceed $50,000, not including interest, costs, and attorneys fees. This amount is exclusive of the increased liability damages under section 302(a)(3).

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(e) Under section 302(d), any judgment entered under Title III shall not be enforceable against an agency or instrumentality of either a transition government in Cuba or a democratically elected government in Cuba.

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(g) Under section 302(f)(1), a U.S. national who brings an action under Title III may not bring any other action seeking monetary or nonmonetary compensation by reason of the same subject matter.

(h) Section 302(f)(2)(A) establishes limits on further recovery by a U.S. national with a FCSC-certified claim depending on whether such Title III action leads to a recovery of a greater, equal or lesser amount than certified by the FCSC. If the claimant's recovery under Title III is equal to or greater than the amount certified by the FCSC, the U.S. national may not recover any payment on the claim under any claims settlement agreement between the United States and Cuba. If the U.S. national in a Title III action recovers less than the amount certified by the FCSC, the U.S. national may only receive payment in any claims settlement agreement between the United States and Cuba to the extent of the difference between the certified claim and the recovery. If there is no recovery, the U.S. national may still receive payment in a claims settlement agreement between the United States and Cuba and will be treated as any other certified claimant who does not bring an action under Title III.

(i) Section 302(f)(2)(B) provides that in the event some or all Title III actions are consolidated by judicial or other action so as to create a pool of assets available to satisfy such claims, FCSC-certified claims will be entitled to payment in full from such pool before any payment is made from such pool with respect to any claim not so certified.

(j) Under section 302(g), if the United States and the Government of Cuba reach a claims settlement agreement settling FCSC-certified claims, any amount paid by Cuba in such an agreement in excess of the payments made under section 302(f)(2) shall be deposited in the U.S. Treasury.

(k) Under section 302(h), the rights created pursuant to Title III may be suspended upon a presidential determination under section 203 that a transition government in Cuba is in place and may be terminated upon a presidential determination that a democratically elected government in Cuba is in power. Neither of these actions shall affect suits commenced before the dates of suspension or termination. While pending suits may proceed to judgment, such judgments

will not be enforceable against a transition or democratically elected government in Cuba under section 302(d).

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(n) Section 305 provides that actions under section 302 may not be brought more than two years after the trafficking giving rise to the action has ceased to occur.

4. Proof of Ownership of a Claim to Confiscated Property

(a) Section 303(a) provides that certification of a claim by the FCSC is conclusive proof of ownership. In all other cases, the court has the discretion to appoint a special master, including the FCSC, to make determinations of the amount and ownership of the claim. Determinations made by administrative agencies or courts of a foreign government or international organization shall not be conclusive unless made pursuant to binding international arbitration to which the United States or the claimant submitted the claim.

(b) Section 303(b) amends the International Claims Settlement Act of 1949 by authorizing a U.S. district court to refer to the FCSC factual questions under Title III involving the amount and ownership by a U.S. national of a claim to confiscated property in Cuba.

5. Consistency With International Claims Practice

(a) Section 303(c) emphasizes that nothing in the LIBERTAD Act shall be construed to require or otherwise authorize the claims of Cuban nationals who became U.S. citizens after their property was confiscated to be included in a future negotiation and espousal of U.S. claims with a friendly government in Cuba when diplomatic relations are restored. Section 303(c) also states that the LIBERTAD Act shall not be construed as superseding, amending, or otherwise altering certifications that have been made under the FCSC's Cuba Claims Program.

(b) Section 304 amends the International Claims Settlement Act of 1949 to state that no person other than a certified claimant shall have a claim to, participate in, or otherwise have an interest in the compensation proceeds paid to a U.S. national by virtue of a certified claim.

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(a) Section 306(a) provides that, subject to the President's suspension authority, Title III takes effect on August 1, 1996.

(b) Section 306(b) provides the President with the authority to suspend the effective date of Title III beyond August 1, 1996, for up to six months, and for additional extensions up to six months, upon a determination and report to the appropriate congressional committees that a suspension is necessary to the national interests of the United States and will expedite a transition to democracy in Cuba. An initial determination and report must be submitted to the appropriate congressional committees at least 15 days before August 1, 1996. Additional suspensions or extensions are subject to the same reporting and determination requirements.

(c) Section 306(c) provides the President with the authority to suspend the right to bring an action under Title III after its effective date for up to six months, and for additional extensions up to six months, upon a determination and report that a suspension is necessary to the national interests of the United States and will expedite a transition to democracy in Cuba. Section 306(c) also emphasizes that after the effective date no persons may acquire a property interest in any potential or pending Title III action, nor shall pending actions commenced before the date of suspension be affected by a suspension.

(d) Section 306(d) provides that the President may rescind any suspension made under section 306(b) or section 306(c) upon reporting to the appropriate congressional committees that doing so will expedite a transition to democracy in Cuba.

Dated: May 11, 1996.

Janet Reno,

Attorney General.

[FR Doc. 96–12407 Filed 5–16–96; 8:45 am]

BILLING CODE 4410–01–M

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By notice dated August 14, 1995, and published in the Federal Register on August 22, 1995 (60 FR 43613), Ganes Chemicals, Inc., Industrial Park Road, Pennsville, New Jersey 08070, made application to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of methylphenidate.

A registered manufacturer of bulk methylphenidate filed a comment alleging that DEA's notice of application, published in the Federal Register, did not comply with notice and comment rulemaking requirements of the Administrative Procedure Act (APA). In addition, the commentor stated that Ganes' registration would be contrary to the public interest under 21 U.S.C. 823(a).

The commentor maintains that DEA "has deprived [the commentor] and other registered manufacturers and applicants of the opportunity to offer fully-informed comments on Ganes' application." In support of its position, the commentor submits that "registration of bulk manufacturers of schedule I–II controlled substances is subject to notice and comment rulemaking." For the reasons provided below, this conclusion is an incorrect interpretation of the APA. First, the commentor ignores the basic definitions set forth in the APA and, in so doing, confuses notice and comment rulemaking with agency licensing proceedings. The commentor argues that DEA proceedings to grant or deny an application for registration as a bulk manufacturer are rulemakings. However, the clear language of the definition of a "rule" exposes the error of this analysis. The APA defines "rule making" to mean an "agency process for formulating, amending, or repealing a rule." 5 U.S.C. 551(5).

The APA defines a "rule" as:

> The whole or a part of an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy or describing the organization, procedure, or practice requirements of an agency and includes the approval or prescription for the future of rates, wages, corporate or financial structures or reorganizations thereof, prices, facilities, appliances, services or allowances therefore or of valuations, costs, or accounting, or practices bearing on any of the foregoing.

5 U.S.C. 551(4).

Review of the APA's definitions of license [1] and licensing [2] reveals that the granting or denial of a manufacturer's application for registration is a licensing action, not a rulemaking. Courts have

[1] Section 551(8) of the APA defines license as "the whole or a part of an agency permit, certificate, approval, *registration*, charter, membership, statutory exemption or other form of permission." (emphasis added).

[2] Licensing is defined as "agency process respecting the grant, renewal, denial, revocation, suspension, annulment, withdrawal, limitation, amendment, modification, or conditioning of a license." 5 U.S.C. 551(9).

FedEx Shipment Receipt

Address Information

Ship to:	**Ship from:**
ATTN: Legal Department	Paula Alvarez
Orbitz, LLC	
333 108th Avenue NE	2525 Ponce De Leon Blvd.
	Suite 1000
BELLEVUE, WA	Coral Gables, FL
98004	33134
US	US
305-445-2500	3054452500

Shipment Information:
Tracking no.: 775918297079
Ship date: 08/06/2019
Estimated shipping charges: 48.67 USD

Package Information
Pricing option: FedEx Standard Rate
Service type: Priority Overnight
Package type: FedEx Envelope
Number of packages: 1
Total weight: 0.50 LBS
Declared Value: 0.00 USD
Special Services:
Pickup/Drop-off: Drop off package at FedEx location

Billing Information:
Bill transportation to: Rivero Mestre-495
Your reference: 1730.01 1731.01 1731.02 1732
P.O. no.:
Invoice no.:
Department no.:

Thank you for shipping online with FedEx ShipManager at fedex.com.

Please Note

FedEx will not be responsible for any claim in excess of $100 per package, whether the result of loss, damage, delay, non-delivery, misdelivery, or misinformation, unless you declare a higher value, pay an additional charge, document your actual loss and file a timely claim. Limitations found in the current FedEx Service Guide apply. Your right to recover from FedEx for any loss, including intrinsic value of the package, loss of sales, income interest, profit, attorney's fees, costs, and other forms of damage whether direct, incidental, consequential, or special is limited to the greater of $100 or the authorized declared value. Recovery cannot exceed actual documented loss. Maximum for items of extraordinary value is $1000, e.g., jewelry, precious metals, negotiable instruments and other items listed in our Service Guide. Written claims must be filed within strict time limits; Consult the applicable FedEx Service Guide for details.
The estimated shipping charge may be different than the actual charges for your shipment. Differences may occur based on actual weight, dimensions, and other factors. Consult the applicable FedEx Service Guide or the FedEx Rate Sheets for details on how shipping charges are calculated.

775918297079

Delivered
Wednesday 8/07/2019 at 10:13 am

DELIVERED

Signed for by: C.ANG

GET STATUS UPDATES

OBTAIN PROOF OF DELIVERY

FROM	TO
Coral Gables, FL US	BELLEVUE, WA US

Shipment Facts

TRACKING NUMBER 775918297079	**SERVICE** FedEx Priority Overnight	**WEIGHT** 0.5 lbs / 0.23 kgs
DELIVERED TO Receptionist/Front Desk	**TOTAL PIECES** 1	**TOTAL SHIPMENT WEIGHT** 0.5 lbs / 0.23 kgs
TERMS Shipper	**SHIPPER REFERENCE** 1730.01 1731.01 1731.02 1732	**PACKAGING** FedEx Envelope
SPECIAL HANDLING SECTION Deliver Weekday	**STANDARD TRANSIT** 8/07/2019 by 10:30 am	**SHIP DATE** Tue 8/06/2019
ACTUAL DELIVERY Wed 8/07/2019 10:13 am		

Travel History

Local Scan Time

Wednesday , 8/07/2019

10:13 am	BELLEVUE, WA	Delivered
8:33 am	ISSAQUAH, WA	On FedEx vehicle for delivery
7:45 am	ISSAQUAH, WA	At local FedEx facility
5:51 am	SEATTLE, WA	At destination sort facility
3:34 am	MEMPHIS, TN	Departed FedEx location

Tuesday , 8/06/2019

8:15 pm	MIAMI, FL	Left FedEx origin facility
6:57 pm	MIAMI, FL	Picked up
2:38 pm		Shipment information sent to FedEx

EXHIBIT B

AUTHENTICATED U.S. GOVERNMENT INFORMATION GPO

Statement on Action on Title III of the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1995

July 16, 1996

From the outset of my administration, I have been committed to a bipartisan policy that promotes a peaceful transition to democracy in Cuba. Consistent with the Cuban Democracy Act and with the efforts of my predecessors, I have maintained a tough economic embargo on the Cuban regime while supporting the Cuban people in their struggle for freedom and prosperity. Often, the United States has stood alone in that struggle, because our allies and friends believed that pressuring Cuba to change was the wrong way to go.

Five months ago, the world was given a harsh lesson about why we need more pressure on Cuba. In broad daylight, and without justification, Cuban military jets shot down two unarmed American civilian aircraft over international waters, taking the lives of four American citizens and residents. I took immediate steps to demonstrate my determination to foster change in Cuba, including the signing into law of the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act, which strengthens the embargo, advances the cause of freedom in Cuba, and protects the interests of American citizens whose property was expropriated by the Cuban regime. And I called on the international community to condemn Cuba's actions.

Now the time has come for our allies and friends to do more—to join us in taking concrete steps to promote democracy in Cuba. That is why today, I am announcing a course of action on Title III of the LIBERTAD Act to encourage our allies to work with us and accelerate change in Cuba.

Title III allows U.S. nationals to sue foreign companies that profit from American-owned property confiscated by the Cuban regime. The law also provides me with the authority to suspend the date on which Title III enters into force, or the date on which U.S. nationals can bring suit, if I determine that suspension is necessary to the national interest and will expedite a transition to democracy in Cuba. I have decided to use the authority provided by Congress to maximize Title III's effectiveness in encouraging our allies to work with us to promote democracy in Cuba.

I will allow Title III to come into force. As a result, all companies doing business in Cuba are hereby on notice that by trafficking in expropriated American property, they face the prospect of lawsuits and significant liability in the United States. This will serve as a deterrent to such trafficking, one of the central goals of the LIBERTAD Act.

At the same time, I am suspending the right to file suit for 6 months. During that period, my administration will work to build support from the international community on a series of steps to promote democracy in Cuba. These steps include: increasing pressure on the regime to open up politically and economically, supporting forces for change on the island, withholding foreign assistance to Cuba, and promoting business practices that will help bring democracy to the Cuban workplace.

At the end of that period, I will determine whether to end the suspension, in whole or in part, based upon whether others have joined us in promoting democracy in Cuba. Our allies and friends will have a strong incentive to make real progress because, with Title III in effect, liability will be established irreversibly during the suspension period and suits could be brought immediately when the suspension is lifted. And for that very same reason, foreign companies will have a strong incentive to immediately cease trafficking in expropriated property, the only sure way to avoid future lawsuits.

Our allies and foreign business partners know from our actions over the past 4 months that my administration is determined to vigorously implement the LIBERTAD Act. For example, Title IV of the act bars from the United States individuals who profit from property confiscated from American citizens. My administration has already begun to notify several foreign nationals that they could no longer enter the United States. Rather than face this prospect, a significant number of foreign companies already has chosen to leave Cuba, thereby reducing the flow of resources the regime uses to maintain its grip on power.

Today's action is the best way to achieve the bipartisan objectives we all share: to isolate the Cuban Government and to bring strong international pressure to bear on Cuba's leaders, while holding out the very real prospect of fully implementing Title III in the event it becomes necessary. By working with our allies, not against them, we will avoid a split that the Cuban regime will be sure to exploit. Forging an international consensus will avert commercial disputes that would harm American workers and business and cost us jobs here at home. And it will help maintain our leadership authority in international organizations.

We will work with our allies when we can. But they must understand that for countries and foreign companies that take advantage of expropriated property the choice is clear: They can cease profiting from such property, they can join our efforts to promote a transition to democracy in Cuba, or they can face the risk of full implementation of Title III. As our allies know from our implementation of other provisions of the bill over the last 4 months, my administration takes this responsibility seriously.

For the past four decades Republican and Democratic administrations alike have worked for the transition to democracy of the last nondemocratic regime in our hemisphere. This is a cause the international community should be prepared to embrace. As implemented under today's decision, Title III of the LIBERTAD Act provides us with powerful leverage to build a stronger international coalition for democracy in Cuba if possible and with a powerful tool to lead that struggle alone if necessary. This is in the best interests of our country and in the best interests of the Cuban people.

Memorandum on the Work Requirements Initiative

July 16, 1996

Memorandum for the Secretary of Health and Human Services

Subject: Work Requirements Initiative

I hereby direct you, in order to move people from welfare to work, to exercise your legal authority to propose a regulation that would require all welfare participants in the Job Opportunities and Basic Skills Training (JOBS) program to sign a personal responsibility plan for working within 2 years. After 2 years, any such JOBS participant who refuses to work, even though a job is available, will be sanctioned by loss of her AFDC benefits.

Welfare reform is first and foremost about work. People who are able to work should be expected to go to work. This proposed regulation will dramatically change expectations for welfare recipients and welfare agencies, ensuring that finding work quickly becomes their primary goal.

William J. Clinton

Executive Order 13011—Federal Information Technology

July 16, 1996

A Government that works better and costs less requires efficient and effective information systems. The Paperwork Reduction Act of 1995 and the Information Technology Management Reform Act of 1996 provide the opportunity to improve significantly the way the Federal Government acquires and manages information technology. Agencies now have the clear authority and responsibility to make measurable improvements in mission performance and service delivery to the public through the strategic application of information technology. A coordinated approach that builds on existing structures and successful practices is needed to provide maximum benefit across the Federal Government from this technology.

Accordingly, by the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

Section 1. *Policy*. It shall be the policy of the United States Government that executive agencies shall: (a) significantly improve the management of their information systems, including the acquisition of information technology, by implementing the relevant provisions of the Paperwork Reduction Act of 1995 (Public Law 104–13), the Information Technology Management Reform Act of 1996 (Division E of Public Law 104–106)