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Could Airbnb Be Sued Using Title III Of The Libertad Act? Can A Prima Facie Case Be Made? Would Be Ironic For Senator Rubio

Title III of the *Cuban Liberty and Solidarity Act of 1996* ("Libertad Act") has an exemption from legal action for residential property that is used solely for residential purposes. Republic of Cuba nationals who are owners of residential property are not subject to legal action using provisions of Title III.

The Trump Administration is expected to notify the United States Congress during the period 1 March 2019 to 4 March 2019 if Title III of the Libertad Act will be implemented, as expected, by 17/18/19 March 2019.

What if a Republic of Cuba national owns a residence in the city of Havana, Republic of Cuba, and is benefiting from commercial activity associated with the residence- renting it to third-parties?

From the Libertad Act: (3) Commercial activity.-- The term "commercial activity" has the meaning given that term in section 1603(d) of title 28, United States Code. [Definition: (d) A "commercial activity" means either a regular course of commercial conduct or a particular commercial transaction or act. The commercial character of an activity shall be determined by reference to the nature of the course of conduct or particular transaction or act, rather than by reference to its purpose].

*What if the owner uses the services of San Francisco, California-based **Airbnb, Inc.**, to market globally the property and to collect the payments, which are then delivered to the owner of the property? Airbnb reportedly represents more than 22,000 properties in the Republic of Cuba; and the properties reportedly generated combined gross revenues of approximately US\$47 million annually from 2015 through 2019.*

Could an argument be made before a United States District Court, despite definitions contained with the Libertad Act, that the residential exemption does not apply because the owner is benefitting from commercial activity which is not necessary and, as a result, Airbnb, which receives revenue from and provides marketing services for the residence in the Republic of Cuba, is a trafficker as defined by the Libertad Act of 1996?

From the Libertad Act: (13) Traffics.--(A) As used in title 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. (B) *The term "traffics" does not include--* (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.

What if an argument is made that the Libertad Act unconstitutionally created two classes of plaintiffs, using the 14th Amendment to the United States Constitution as the basis: "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

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Would be ironic if the Libertad Act of 1996, which The Honorable **Marco Rubio** (R- Florida) supports as a tool of influence, was used to file a lawsuit against Airbnb, a company whose activity in the Republic of Cuba is supported by Senator Rubio due to its role in lessening revenues to the government of the Republic of Cuba and directing revenues to Republic of Cuba nationals.

From a Washington DC-based attorney. “No, this is simply wrong.” 1. A property that is residential in nature is not confiscated property. Doesn’t qualify - that alone should end the enquirer. 2. A Cuban national cannot be a trafficker. So, there is no predicate act of trafficking Airbnb is profiting or benefitting from. 3. Transactions incident to lawful travel to Cuba do not constitute trafficking. So again there is no predicate act of trafficking from which Airbnb benefits or profits. If a suit were filed, it would be dismissed immediately with compensatory sanctions ordered by the judge against the plaintiff’s attorney.

However, once the process shifts from being defined by politicians to being subject to the determination(s) of judges, what may have been perceived as wrong may become actionable...

Certified Claims Background

There are 8,821 claims of which **5,913** awards valued at **US\$1,902,202,284.95** were certified by the USFCSC and have not been resolved for nearing sixty years. The USFCSC permitted interest to be accrued in the amount of 6% per annum; with the current value of the 5,913 certified claims approximately **US\$8,521,866,156.95**.

The first asset to be expropriated by the Republic of Cuba was an oil refinery in 1960 owned by White Plains, New York-based **Texaco, Inc.**, now a subsidiary of San Ramon, California-based Chevron Corporation (USFCSC: CU-1331/CU-1332/CU-1333 valued at **US\$56,196,422.73**).

The largest certified claim (*Cuban Electric Company*) valued at US\$267,568,413.62 is controlled by Boca Raton, Florida-based **Office Depot, Inc.** The second-largest certified claim (*International Telephone and Telegraph Co, ITT as Trustee, Starwood Hotels & Resorts Worldwide, Inc.*) valued at US\$181,808,794.14 is controlled by Bethesda, Maryland-based **Marriott International**. The smallest certified claim is by *Sara W. Fishman* in the amount of US\$1.00 with reference to the Cuban-Venezuelan Oil Voting Trust.

The two (2) largest certified claims total US\$449,377,207.76, representing **24%** of the total value of the certified claims. Thirty (30) certified claimants hold **56%** of the total value of the certified claims. This concentration of value creates an efficient pathway towards a settlement.

Of the 5,915 certified claims, 913, or **15%**, are valued at US\$50,000.00 or more. Adjusted for inflation, US\$50,000.00 (3.70% per annum) in 1960 has a 2019 value of approximately US\$427,267.01. The USFCSC authorized 6% per annum, meaning the 2019 value of US\$50,000.00 is approximately US\$1,649,384.54.